



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

Appeal Number: PA/07709/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd June 2017**

**Decision & Reasons Promulgated
On 03rd July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR JAHANGIR SIDDIK
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Head, Counsel

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born on 16th October 1985. The Appellant had applied for asylum and asked to be recognised as a refugee. His claim for asylum was based upon a purported fear that if returned to Bangladesh he would face mistreatment on the basis of his political opinion as a supporter of the Awami League, conversion to Christianity and his fear of the Awami League due to money he loaned from them. The latter ground was acknowledged by the Secretary of State as being a non-Convention reason. The Appellant's claims were refused by Notice of Refusal dated 12th July 2016.

2. The Appellant lodged Grounds of Appeal and the appeal came before Judge of the First-tier Tribunal Chana sitting at Harmondsworth on 1st September 2016. In a Decision and Reasons promulgated on 24th November 2016 the Appellant's appeal was dismissed on all grounds.
3. On 8th December 2016 the Appellant lodged Grounds of Appeal to the Upper Tribunal. Permission to appeal was refused by First-tier Tribunal Judge Grant-Hutchison on 26th January 2017. Judge Grant-Hutchison considered that the First-tier Tribunal Judge had considered all the evidence and made appropriate findings which were open to her to make and that it was open for the judge to consider what weight she felt it appropriate to place on all the evidence before her. She considered that the judge had given detailed reasons for coming to the conclusion that (a) no background evidence had been provided to show that the prison conditions in Bangladesh were of such harshness that the Appellant should be granted humanitarian protection for having to go to jail in Bangladesh for his theft or that said conditions reached the Article 3 threshold and (b) in any event the judge found that the Appellant's entire story was a pure fabrication.
4. On 9th February 2017 renewed Grounds of Appeal were lodged with the Upper Tribunal. On 4th May 2017 Upper Tribunal Judge Perkins granted permission to appeal. Judge Perkins noted that it was appreciated that the First-tier Tribunal Judge had rejected much of the Appellant's case including his claimed conversion to Christianity, for apparently sound reasons that, appropriately, had not been criticised in the application for permission to appeal. He noted that he granted permission because the ground made out a reasonably arguable case that the First-tier Tribunal Judge did not consider rationally (or at all) strands of evidence concerning particularly (but not limited to) prison conditions in Bangladesh.
5. On 30th May 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Secretary of State contended therein that the grounds were totally misconceived and that the suggestion that the Appellant faces an Article 3 breach in prison is predicated on the fact that he would be prosecuted for stealing/borrowing money that he has failed to repay. However, the First-tier Tribunal Judge had totally rejected the Appellant's claim and critically at paragraph 63 the First-tier Tribunal Judge had stated: "The Appellant's entire story is a pure fabrication". In any event it was unclear that if there was any evidence before the judge as to the likely punishment for stealing money it may be that the Appellant would simply be asked to repay the money, fined or given a non-custodial sentence.
6. 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. The Appellant appears by his instructed Counsel, Ms Head. Ms Head is familiar with this matter. She appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer, Mr Jarvis.

7. Ms Head has indicated to me that she had expected the Appellant to personally attend. He has failed to do so. I do not hold that against him. In any event this matter was an error of law hearing dealt with by submissions and I proceeded in his absence.

Submissions/Discussions

8. Ms Head relies on the grounds. Firstly she takes me to paragraph 6 of the judge's decision where she points out the judge has set out the basis of the claim and she refers me to the findings of fact which are set out at paragraph 39 thereafter. The main thrust of her argument and criticism of the First-tier Tribunal is to be found in the findings made by the judge at paragraph 51. She notes that at paragraph 51 the judge has stated:

“The Appellant claims that he borrowed three lakhs from an organisation called Bongo Bondhhu Memorial Fund on which he was the president. He said he could do so ... and had the authority to take the money. ... This demonstrates to me that the Appellant fears persecution and not prosecution. No background evidence has been provided to me that the prison conditions in Bangladesh are of such harshness that he should be granted humanitarian protection for having to go to jail for his theft in Bangladesh.”

9. Ms Head submits that in reaching this finding the judge has ignored the background evidence and the further representations submitted on the Appellant's behalf and that had the judge properly considered this evidence she could not have reached the findings that she did. Therefore she submits that the findings reached on the risk the Appellant faces on return to Bangladesh were unsustainable and that the judge has failed to consider the prison conditions that currently exist within Bangladesh as are set out in the objective evidence.
10. She submits that it was not open to the judge that no background evidence was provided to indicate that prison conditions in Bangladesh were of such harshness that he should not be granted humanitarian protection for having to go to jail for his theft or that such evidence was clearly before her. Further it was submitted on the Appellant's behalf that his failure to repay the funds would lead to the Appellant being punished by a term of imprisonment under the Bangladesh Penal Code of 1860 and it was submitted that the judge had failed to engage with this reality and as such her findings in relation to the risk the Appellant faces on return to Bangladesh are unsustainable.
11. In response Mr Jarvis takes me as his starting point to paragraph 63 of the judge's decision, pointing out that the findings therein by the judge have not been challenged and that the judge has rejected the Appellant's claim that his version of events is credible. Further he submits that paragraph 51 has to be read on the basis of the Appellant facing persecution and not prosecution and he refers me to the decision in *SH (prison conditions) Bangladesh [2008] UKAIT 00076*. He asked me to dismiss the appeal.

The Law

12. 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.
13. 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.

Case Law

14. *SH (prison conditions) Bangladesh [2008] UKAIT 00076* is authority for the following propositions:
 - (a) Prison conditions in Bangladesh, at least for ordinary prisoners, do not violate Article 3.
 - (b) This conclusion does not mean that an individual who faces prison on return to Bangladesh can never succeed in showing a violation of Article 3 in the particular circumstances of his case. The individual facts of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3.

Findings on Error of Law

15. The starting point herein are the findings reached on Appellant's credibility by the First-tier Tribunal Judge. It is important to note the way those findings are set out at paragraph 63 of the judge's decision:

"Considering all the evidence in the case as a whole, I find that no-one in Bangladesh has any interest in the Appellant and that the Appellant's entire story is a pure fabrication. I find that the Appellant came to this country from Bangladesh as an economic migrant and

not because he fears, any persecution or prosecution in Bangladesh. I find that the Appellant is a man of no credibility whatsoever.”

16. It is against such strong findings on credibility which, I note, are not challenged in the Grounds of Appeal nor by Ms Head in her submissions that this appeal comes before me. The thrust of the appeal is that the Appellant might be subjected to prison conditions which breach his right for humanitarian protection. *SH* is clear in the manner in which it states the law. Each case must be considered by its own facts. In this case the judge has made it clear firstly that she does not actually believe any of the Appellant’s version of events. It is a most damning attack on credibility which at no point in the appeal process his legal representatives seek to challenge. The premise therefore is that his version of events is not true.
17. Secondly the judge has given consideration to the position regarding his risk in prison. At paragraph 51 the judge has found that there has been no background evidence provided to her that the prison conditions were of such harshness that the Appellant should be granted humanitarian protection for having to go to jail for his theft. This therefore is clearly a judge who is aware of the overall conditions in Bangladeshi prisons and relied on evidence being produced which was supportive to the Appellant’s position. Bearing in mind her findings on credibility and her findings with regard to evidence on prison conditions she has made findings that she is perfectly entitled to and even if Ms Head is correct in stating that there was overall objective evidence with regard to prison conditions generally in Bangladesh it is clear that no specific evidence to the fate of this Appellant if he attends prison had been provided as would appear to be appropriate if following the guidance in *SH* and in any event this is an Appellant whose whole story has been found to lack credibility and is not challenged.
18. Consequently if there is any error of law in the failure to the judge to specifically make reference to the objective evidence it is not material and in such circumstances this is a judge who has given clear and due consideration to all factors that were brought to her attention and has given a well-reasoned and well-considered judgment. The decision discloses consequently no material error of law and the appeal of the Appellant is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Decision

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

No anonymity direction is made.

Signed D N Harris

Date 22nd June 2017

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 D N Harris

Date 22nd June 2017

Deputy Upper Tribunal Judge D N Harris