

Upper Tribunal
(Immigration and Asylum Chamber)
Appeal Number: PA/08559/2016



THE IMMIGRATION ACTS

Heard at: Field House
On: 16 October 2017

Decision and Reasons Promulgated
On: 30 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

M R
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms S Iqbal, counsel (instructed by Taj Solicitors)
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them 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.
2. The appellant is a national of Bangladesh, born on 23 January 1981. He appeals with permission against the decision by the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum, humanitarian protection and human rights claims.
3. In granting permission to appeal on 8 August 2017, Upper Tribunal Judge Finch stated that the Judge did not consider all of the evidence "holistically" giving each part of the evidence appropriate weight before reaching a final decision on the appellant's credibility. Moreover, the Judge also failed to take into account the objective evidence about the authorities in Bangladesh, fabricating cases against

political opponents. It also appeared from his substantive asylum interview that he had been able to give detailed information about the BNP.

Error of law hearing

4. Ms Iqbal, who did not represent the appellant before the First-tier Tribunal, adopted her skeleton argument.
5. She submitted that the Judge's approach at [20] of the determination 'contravened' the guidance given by the Court of Appeal in JT (Cameroon) [2008] EWCA Civ 878. The Judge found that the appellant's delay in claiming asylum is damaging to his credibility. This did not mean that he must disbelieve him "but I must have and do view his account through the prism of his damaged credibility." That paragraph occurred at the outset of his findings and conclusion.
6. The Judge had noted that the appellant was a qualified lawyer. He came to the UK in fear of his life in October 2010, intending at the same time to study at post graduate level. He claimed not to have known anything about asylum in the UK. He learned of asylum in mid-2015 and only applied for asylum in December 2015.
7. Ms Iqbal submitted that this approach was wrong as the Judge failed to conduct a global assessment of his credibility. He had already reached a conclusion about part of the appellant's account which he stated would impact on the entire claim.
8. Ms Iqbal further submitted that the Judge's approach regarding the appellant's BNP membership was also flawed. At [37] he rejected the documentary evidence confirming the appellant's role in the BNP party in Bangladesh as he concluded that this evidence was undermined "...by references to the existence of false criminal cases against the appellant because I have rejected the reliability and credibility of that part of the appellant's claim." He was unable to place much weight on the letter of the BNP [39].
9. The Judge did not however give individual consideration to separate pieces of evidence as noted by Upper Tribunal Judge Finch when granting permission. Accordingly, the Judge also assessed this particular issue in a vacuum without considering the potential corroborative evidence. The Judge "put the cart before the horses".
10. Ms Iqbal submitted that the Judge further erred in assessing the evidence concerning the appellant's membership of the BNP and in particular in the UK. He accepted at [41] that documents provided by the BNP supported the appellant's claim to be involved in the BNP in the UK and that the appellant is a visible member of BNP in the UK – [46].
11. On the basis of these findings he found that the appellant was a low level supporter or member of the BNP in Bangladesh, albeit not a prominent one or leader of any grouping in the BNP and did not have any particular profile in the BNP. He may have been involved in political activities in Bangladesh commensurate with his low level support, which may have brought him into conflict with other low level supporters of the opposition. This did not result in his establishing a particular profile "or of leading to the authorities having a specific interest in him" [43].

12. She submitted that the Judge has adopted an inconsistent approach in accepting the BNP-UK evidence but rejecting BNP-Bangladesh evidence. The documentary evidence was provided by the same organisation, albeit in two different countries. There were not adequate reasons explaining the differing findings.
13. The Judge accepted that the appellant was a visible member of the BNP in the UK – [46] but it remained unclear despite the background evidence relied on, why the Judge concluded that the appellant would not be at risk on return.
14. She also submitted that the Judge failed properly to consider the appellant's asylum interview where he gave detailed evidence about the BNP party contrary to the contentions in the reasons for refusal and the Judge's findings at [42] of the determination.
15. The Judge's finding that he had surprisingly poor knowledge of the BNP and politics in Bangladesh as demonstrated throughout his asylum interview is not borne out.
16. She submitted that the appellant answered all the relevant questions in the interview. She referred to his answers given to questions 11-19. There he set out some of the history. He also set out in some detail his current position in the BNP in Bangladesh. He also set out in some detail the history of the BNP including when it was founded. He identified matters such as the emblem or logo of the party, the colour of the star and what it signifies. This, she submitted, showed his knowledge about the BNP and his own involvement with the party over the years.
17. It is also evident that he was not in the right state of mind when he was interviewed and he informed the interviewing officer of that during the course of his interview. He stated at one stage that he would like a break as he is struggling to sit down and would like to stand for a while. That was because of lack of sleep. He was struggling to recall things. The interviewing officer stated that if he is unable to continue the interview he would need to provide medical evidence from a doctor that he is unable to be interviewed "today" - Q 21. The appellant stated that if he could have the opportunity it would be good, "I could go to and request that." The interviewing officer then said that the problem is that if he has a young baby it could be months and months of not having a good night's sleep and the interview needs to be conducted. The officer then consulted a senior colleague, noting that he appreciated that the appellant had had some sleepless nights but as the interview needs to be completed, "we will continue, the rest of the interview will be over an hour left and we have already been through 30 minutes."
18. She submitted that the Judge also failed to assess the appellant's account of leaving the country on his own passport having regard to the background evidence. His evidence referred to at [23-29] and [32] included the assertion that the appellant was able to leave without any difficulty due to the use of someone with influence, which was despite the fact that FIRs had been issued against him. The Judge appeared to find the appellant's account incredible, failing to place this in the context of the background evidence about corruption and bribery.

19. Further, the Judge appeared to ignore the appellant's evidence corroborated by background evidence in relation to false, politically motivated cases used against political opponents when necessary.
20. Mr Clarke relied on the Rule 24 response. He submitted that there have been no material errors. He referred to the grounds of appeal and to the asylum interview at Q30 where the appellant stated that in 2008 he "thought to save myself I would leave the country." This was not correct as the evidence was not such that he should leave the country at that time. It was what his parents told him in 2014.
21. With regard to the Judge's assessment of the delay, the Judge did not restrict himself simply to the delay in claiming asylum but had regard to the appellant's chronology of events and his recent claim. The analysis of the whole delay permeates the appellant's claim.
22. The Judge's assessment began at [15]. The appellant claimed to have feared for his life and it was not credible that he would have embarked on a relatively lengthy process of applying for a student visa. His conduct introduced delay and uncertainty. Even though his first application was refused he remained to await the outcome of a fresh application for a student visa.
23. Mr Clarke also referred to paragraphs 17-20 which were in the same vein. At [19] the Judge stated that he was not satisfied that it is credible that he would not have realised the need to seek asylum a long time before December 2015 as he was aware that his presence in the UK was time limited and he would be expected to return to Bangladesh. Accordingly, this is the context in which paragraph [20] must be considered.
24. Mr Clarke very properly accepted that the Judge did say that he had to accordingly view the appellant's account "through the prism" of his damaged credibility. Although under s.8 of the 2004 Act the Judge was obliged to take into account the delay, Mr Clarke very fairly accepted that there had been "a poor choice of words".
25. Mr Clarke submitted that the Judge had considered the appellant's appeal "holistically". It is evident that he considered the FIRs which accused the appellant and 14 others of terrorism. The appellant told the Tribunal that he was not aware of these cases until he spoke to his parents about returning to Bangladesh, in 2014. He claimed in interviews that the dates alleged are when he was actually in the UK. The Judge found that to be untrue. The dates of the FIR and the arrest warrants were before the appellant left Bangladesh. That was damaging to his credibility [31].
26. Further, the Judge had regard to the appellant's claim about anticipating difficulties at the airport and his pre-arranged assistance from a friend who was a senior officer [32]. The documents were only produced at the asylum interview, some five years later. Why did he not claim asylum at an earlier stage? Mr Clarke submitted that this is not a "pure section 8 point." The very nature of his claim does not stack up against his own evidence.
27. The Judge moreover looked at the further issues, expressly stating that at [20]. He also found the appellant's evidence generally unsatisfactory [22]. It was vague and

evasive. Accordingly, the Judge did not simply reject his claim on the basis of a late prosecution of his asylum claim.

28. As to the submissions relating to the documentary evidence at paragraph 14 of the grounds, he submitted that this amounts to a disagreement only. The Judge has given cogent reasons on the issue of risk.
29. With regard to the documentary evidence provided by the BNP, the Judge noted at [37] that the evidence is undermined by references to the existence of false criminal cases against the appellant because he has rejected the reliability and credibility of that part of his case.
30. The Judge did however "reassess" his approach to that evidence in the light of the BNP letter, referring to it, because he must carry out a holistic assessment. However, the apparent corroboration provided by the BNP letter amounted to corroboration of a fabrication.
31. Mr Clarke submitted that the Judge had to start somewhere. Accordingly it is necessary to read paragraph [38] in the light of the earlier findings, and in particular those at [36].
32. Finally, he submitted that the Judge's findings at [42] that the appellant had surprisingly poor knowledge of the BNP and politics in Bangladesh was not material to the overall findings. The Judge was clear that he had a low profile consistent with being a member of the BNP. He also had regard to the appellant's vague and evasive evidence.
33. In reply Ms Iqbal submitted that the issues considered by the Judge in respect of delay related wholly to s.8. She submitted that the 2004 Act stated a deciding authority shall take into account as damaging the appellant's credibility, of any behaviour to which the section applies. The Judge did more than merely take into account as damaging his credibility, behaviour to which the section applied. That finding was by no means in a vacuum. It infected the whole approach to other evidence and issues including the FIRs.
34. Moreover, the Judge made no finding in respect of the documents and their reliability. There had been a number of requests made by the appellant's solicitors for any verification reports relied on. None however was made available.

Assessment

35. I have had regard to Mr Clarke's overarching submission, namely, that the Judge in fact considered the evidence of procrastination and delay, in its entirety, including the history of the delay in leaving Bangladesh at a much earlier stage despite the appellant's claim of existing difficulties.
36. At the outset of his findings and assessment however the Judge had regard to the appellant's delay in claiming asylum as damaging his credibility. There is an apparent reference to s.8 of the 2004 Act. Although the Judge noted that this does not mean that he must disbelieve the appellant, he nevertheless "must and do view his account through the prism of his damaged credibility." The fact that this factor was considered at the outset would not ordinarily be problematic. As Mr Clarke observed the Judge had to start somewhere.

37. It appears however that the Judge did not simply consider this to be a factor which had to be taken into account in the context of the evidence as a whole. The remainder of the evidence was going to be considered through that prism of delay.
38. As noted by Upper Tribunal Judge Finch, he did not have proper regard to the approach in Karanakaran v SSHD [2000] EWCA Civ 11, where the Court of Appeal found that it was necessary to consider all of the evidence holistically, giving each part of the evidence appropriate weight before reaching a final decision about an appellant's credibility.
39. Notwithstanding Mr Clarke's very astute submissions however, I cannot safely find that the Judge did in fact consider the delay in making the claim to be one of the factors to be taken into account after considering the evidence as a whole.
40. At paragraph [37] the Judge also rejected the reliability and credibility of the appellant's role in the party in Bangladesh which had however been confirmed in the documentary evidence provided by the BNP. He stated that the evidence was undermined by references to the existence of false criminal cases against the appellant because he has rejected the reliability of that part of his case. However, as noted by Judge Finch, he did not give individual consideration to separate pieces of evidence.
41. Nor did the Judge take into account the 'objective' evidence concerning the authorities in Bangladesh fabricating cases against political opponents.
42. Finally, as already noted, the appellant was in fact able at the substantive asylum interview to give detailed information about the BNP.
43. I find that there have been material errors in the determination rendering it unsafe. I set it aside. In the circumstances the parties were agreed that if I reached that conclusion the case should be remitted to the First-tier Tribunal in Newport for a fresh decision to be made.
44. I am satisfied that the extent of judicial fact finding which is necessary in order for the decision to be re-made, is extensive. This will be a complete re-hearing with no findings preserved. I have also had regard to the overriding objective and conclude that it would be just and fair to remit the case.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside.

The appeal is remitted to the First-tier Tribunal, Newport, for a fresh decision to be made by another Judge.

Anonymity direction made

Signed

Date 24 October 2017

Deputy Upper Tribunal Judge C R Mailer

