



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12337/2016

THE IMMIGRATION ACTS

Heard at Field House
On 25th September 2017

Decision & Reasons Promulgated
On 29th September 2017

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

M S R S
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Biggs of Counsel instructed by Reymond Solicitors

For the Respondent: Mr N Bramble, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse him refugee protection, humanitarian protection or leave to remain on human rights grounds. The appellant is a citizen of Bangladesh.

Background

2. The appellant has been in the United Kingdom since March 2011, initially as a Tier 4 Student, but that leave was curtailed to expire on 23 April 2013. He has not had extant leave since then.
3. The appellant's case is that before coming to the United Kingdom, he was involved with Chhatra Shibir, the student wing of Bangladesh Jamaat-e-Islami, that he was President of the local branch of Chhatra Shibir, and that he organised demonstrations against the illegal practices and policies of the Bangladeshi Government who were torturing members of Jamaat-e-Islami. He was never personally arrested or detained, always managing to hide in time [28].
4. On arrival in the United Kingdom in 2011 (see [31]) the appellant did not claim asylum because, he says, he thought that the Government in Bangladesh would change and he could return to his country on the completion of his studies. However, in 2010 he says there was an FIR lodged against him. He now says that he is at risk on return in Bangladesh by reason of his political profile and activities.

First-tier Tribunal decision

5. The First-tier Tribunal Judge dismissed the appeal, rejecting the credibility of the appellant's core account and finding it to be a fabrication. The Judge found that there were points of discrepancy between the appellant's evidence and that of his witnesses, and rejected the core account in the following terms:

"53. There are inconsistencies in the appellant's evidence with regards to his claimed membership of the JI group CS and his claimed fear from the AL. I do not find the appellant's evidence credible or consistent.

52. The appellant has produced no documentary evidence, such as membership card of his membership of Jamat-e-Islami, he said that Mr Ahmed will give evidence as to his membership. The evidence of the appellant is contradictory to that given by the witness, I find that on the lower standard of proof I do not accept that the appellant was a member of the JIP or that the authorities had any interest in him as he claims.

54. I find that the appellant has fabricated the whole evidence to support his asylum claim. The appellant has provided many, many documents in support or [sic] his claim, I have assessed these documents in the round in the light or [sic] olive oral evidence before me and I find that these documents have been provided to support the appellant's assertions he was an active member of JIP and that he was on an interest [sic] to the Bangladeshi authorities whilst he was in Bangladesh, these claims have not been established on the lower standard of proof."

6. The Judge rejected the appellant's account of taking part in demonstrations, finding his evidence to have been 'totally discredited'.

Grounds of appeal

7. The appellant appealed to the Upper Tribunal alleging bias and inappropriate treatment of one of the appellant's witnesses, and challenging the Judge's reasoning on credibility, in particular his failure to deal with the mass of supporting documents in the appellant's bundle, and in failing to consider the appellant's credibility in the round, taking into account all the evidence, including the documents, instead of applying negative credibility findings on the oral evidence to the weight which the documents would bear.
8. The grounds of appeal to the First-tier Tribunal were accompanied by a witness statement from one of the appellant's witnesses, alleging that the First-tier Tribunal Judge MA Khan was offensive and disrespectful to him during his evidence, telling him to slow down, that he spoke too fast and should know how to speak as the witness was a solicitor.
9. During cross-examination, the witness said the Judge abruptly and aggressively interrupted his evidence, shouting about whether the witness had advised the appellant to seek asylum in the United Kingdom, which he found rude, disruptive, humiliating and intimidating. The witness said that the Judge continued to be angrier and angrier, and that although he had attended many Courts and hearings, including Magistrates Courts, County Courts and various Council panel hearings, he had never faced such hostility, aggression and intimidation. He did not expect the judgment fairly to reflect his evidence, but that the Judge would make his judgment based on his own opinion and views.

Permission to appeal

10. Permission to appeal was granted as follows:-

- "2. The grounds in support of the application for permission to appeal, which was made in time, assert that the Judge erred materially in law:
- (I) in that there was a perception of bias *cf. Elayi* [2016] UKUT 508 (IAC) in respect of his treatment of the witness, [RS]; ...
 - (iii) in failing to make findings as to the supporting documents and in failing to consider the Appellant's credibility in light of the documents, rather than the other way around; ..."

Permission was not granted on grounds (ii) or (iv), which challenged the reasons for the negative credibility finding and the failure to make a finding regarding the witness evidence of JA, a recognised refugee.

Rule 24 Reply

11. The respondent in her Rule 24 reply dealt with both bias and the document issue as follows:-

- “3. [In relation to bias] The questions posed by the Judge to the appellant do not suggest that the Judge was cross examining the appellant but merely seeking to clarify certain issues. The Judge was entitled to ask the witness questions. Clearly the appellant could not answer the questions and thus appeared vague and evasive.
4. The Judge was entitled to find that little weight could be attached to the documents and did very little to assist the appellant’s claim. The documents were only one part of the evidence. The Judge also heard evidence from the appellant and the witness and concluded that they were not credible.”

Judge’s comments on the bias allegation

12. The Judge has been given an opportunity to comment on the allegation of bias and he said this:-

“Dealing with [the witness’] complaint about his appearance as a witness before me on 9 December 2016 as a witness in the above-mentioned case, I do not agree with his claims that I interrupted him during his evidence, mistakenly, stating his evidence, spoke harshly to him during oral testimony before me. I accept that I did asking (sic) him to speak slowly so that I could write down his evidence, I do my utmost to make a full note of the proceedings. Mr Islam is recalling his assessment of the proceedings one month 10 days after the hearing, while the notes of the proceeding are contemporaneous, at page 13 of my handwritten note, I have noted that he was vague and evasive.

The court staff and Home Office Presenting Officers are all aware of my practice in treating appellants, their representatives, witnesses, interpreters and everyone else connected with my court with utmost, respect and dignity. I cannot understand why Mr Islam feels that he was treated in the manner that he sets out in his statement.”

13. That was the basis on which this appeal came before me for error of law decision.

Discussion

14. I begin with ground (iii), the credibility approach taken by the Judge to the appellant’s documents. I am guided by the judgment in the Court of Appeal of Mr Justice Wilson, giving the judgment of the Court, in *Mibanga v Secretary of State for the Home Department* [2005] EWCA Civ 367 at [24]:

“It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto. Just as, if I may take a banal if alliterative example, one cannot make a cake with only one ingredient, so also frequently one cannot make a case, in the sense of establishing its truth, otherwise than by combination of a number of pieces of evidence. ...What the fact-finder does at his peril is to reach a conclusion by reference only to the appellant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence. Mr Tam has drawn the court's attention to a decision of the tribunal dated 5 November

2004, namely *HE* (DRC - Credibility and Psychiatric Reports) [2004] UKIAT 00321 in which, in paragraph 22, it said:

"Where the report is specifically relied on as a factor relevant to credibility, the Adjudicator should deal with it as an integral part of the findings on credibility rather than just as an add-on, which does not undermine the conclusions to which he would otherwise come."

In this appeal, the Judge undoubtedly fell into the *Mibanga* error. He decided, on the basis of the oral evidence alone, that the appellant was not a credible witness, then discounted the bundle of documents for that reason.

15. It is of course a matter for the fact-finding judge the weight to be given to documentary evidence, but it is reasonably clear from the robust findings made in this decision that despite the judge's assertion to the contrary, he did not examine the bundle of documents to which he was taken. The bundle included, for example, his membership card for Jamiat-e-Islami, and the original was available at the hearing. I have consulted his handwritten Record of Proceedings which contains clear references to particular page numbers in the bundle which are not reflected in the determination. The decision is unsound for that reason and cannot stand.
16. As regards the bias allegation, there is a direct conflict of evidence and the proceedings were not recorded. Since I have decided that there is a material error of law in the decision in relation to the documents, I do not need to reach a conclusion on the bias allegation and I do not do so.
17. The decision will be set aside and remade. The decision of the First-tier Tribunal in the appeal of the appellant's wife remains the *Devaseelan* starting point for the remaking of the decision, which will be remitted to the First-tier Tribunal for hearing afresh.

DECISION

9. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law. I set aside the previous decision.

The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed, with no findings of fact or credibility preserved.

Signed: *Judith A J C Gleeson*
Upper Tribunal Judge Gleeson

Dated: 28 September 2017