



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/03314/2018

THE IMMIGRATION ACTS

Heard at Field House  
On Tuesday 19 June 2018

Determination Promulgated  
On Thursday 12 July 2018

Before

THE HONOURABLE MRS JUSTICE MOULDER  
UPPER TRIBUNAL JUDGE SMITH

Between

N C  
[ANONYMITY DIRECTION MADE]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr D Coleman, Counsel instructed by M & K solicitors  
For the Respondent: Mr C Avery, 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 the challenge to the First-tier Tribunal's decision is on protection grounds, it is appropriate to make that order. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

## DECISION AND REASONS

### Background

1. The Appellant appeals against a decision of First-Tier Tribunal Judge Hodgkinson promulgated on 6 March 2018 (“the Decision”) dismissing the Appellant’s appeal against the Secretary of State’s decision dated 23 January 2018 refusing his human rights claim which decision was made in the context of an automatic deportation order.
2. The Appellant is a national of Bangladesh. He came to the UK with entry clearance as a family visitor in September 2011. He returned to Bangladesh in October 2011. Further visits took place in June to November 2012, December 2013 to April 2014 and July 2014 to January 2015. On each occasion, the Appellant returned to Bangladesh. The Appellant last travelled to the UK as a visitor on 22 April 2015 and has not left since.
3. On 28 May 2015, the Appellant was arrested. He claimed asylum in August 2015. Having been released on bail, the Appellant was again arrested on suspicion of fraud. On 30 November 2015, he was convicted on three counts of facilitating the acquisition and possession of criminal property under the Proceeds of Crime Act 2002. The offences were committed during the Appellant’s previous visit to the UK in July 2014 to January 2015. The Appellant was sentenced to seven months’ imprisonment.
4. The Appellant’s asylum claim was refused on 8 February 2016. His appeal was dismissed by a decision of First-tier Tribunal Judge A. Blake promulgated on 24 April 2017 (“the First Tribunal Decision”). Attempts to challenge the First Tribunal Decision failed.
5. On 28 July 2017, the Appellant was convicted on eight counts of facilitating the acquisition and possession of criminal property. He was sentenced to twelve months in prison.
6. Consequent on that latter conviction, the Respondent gave notice of an intention to deport the Appellant. On 19 January 2018, an automatic deportation order was made. On 23 January 2018, the Respondent refused the Appellant’s human rights claim by the decision under appeal. Although, as we come to below, the Appellant has already had a protection claim dealt with and dismissed on appeal, he resurrected that claim and produced further documents which he said supported that claim. As confirmed at [15] of the Decision, although this amounted to a “new matter”, the Respondent did not object to that claim being made again in this appeal.
7. In relation to the protection claim, the Judge identified as his starting point the findings in the First Tribunal Decision. He concluded, as had the First Tribunal, that the Appellant’s claim was not credible. In relation to the claim on Article 8

grounds, he concluded that the Appellant's partner and children could remain in the UK without him and that such would not be unduly harsh. He rejected the claim made based on the Appellant's family and private life, finding that the public interest in deportation outweighed the interference with that family and private life.

8. The Appellant raises two grounds of appeal as follows:

- (1) The Judge has erred in his consideration of the further evidence in relation to the protection claim by failing to provide adequate reasons for rejecting that evidence as not credible and failing to assess the evidence independently of the (adverse) credibility findings reached in the earlier appeal.
- (2) The Judge has failed to provide reasons for rejecting the OASys evidence as to further risk and has also failed to provide reasons for being dissatisfied with the letter from Cora Milne.

9. Permission to appeal was granted by First-tier Tribunal Judge Lambert on 4 April 2018 in the following terms so far as relevant:

"...[2] The decision displays careful evidence based reasoning capable of supporting the conclusions under the relevant immigration rules and under Article 8 outside the rules, with proper regard to the best interests of the Appellant's children. However Ground 1, which argues failure to give any reasons independent from previous adverse credibility findings for rejecting as unreliable additional documents produced by the Appellant together with the evidence of two witnesses, is on the face of paragraphs 48-53 of the decision arguable.

[3] There is therefore an arguable error of law disclosed by the application."

10. The matter comes before us to decide whether the Decision contains a material error of law.

## **Decision and Reasons**

### **Ground Two**

11. In relation to the second of the two grounds, although the grant of permission does not expressly find this ground to be arguable, it does not expressly refuse permission and we accept therefore that we need to deal with it.

12. We can, however, deal with this ground relatively shortly. The focus of Mr Coleman's submissions was the first ground, consistently with the grant of permission to appeal. His submission in relation to the second ground was limited to an argument that the Judge should have given some weight to the evidence contained in the OASys report and Ms Milne's letter and has failed to explain why he gave that evidence no weight. Mr Avery submitted that the Judge's reasoning on this aspect of the evidence was sufficient; the Judge gave good reasons for giving the evidence no weight.

13. The Judge dealt with this evidence at [63] of the Decision as follows:

“[63] Turning to the Oasys Assessment of 22 January 2018, so far as I can ascertain having read the entirety of that document, there is no assessment therein of the appellant’s propensity to reoffend and no reference therein to the level of harm which he continues to pose to the community. There is no reasoning contained in the Offender Supervisor’s subsequent letter, as to why the appellant is considered to be a low risk of harm to the community, especially bearing in mind his complete denial of the offences for which he has been convicted in the past. Consequently, I have given no weight to the Oasys assessment and the subsequent letter of Cora Milne. However, I would add that, even if her assessment is correct, I do not find it to be determinative of proportionality or of the outcome of the appeal.”

14. The OASys assessment is dated 21 November 2017. It is written by Ms Milne and countersigned by Ms Honeysett. It records the date of the Appellant’s release from prison as 26 January 2018. It does provide at page [6] of the assessment a percentage risk of reoffending as 19% in the first year of discharge rising to 32% within two years but does not expand on the level of that risk nor the reasons behind it. As noted by the Judge, the assessment refers to the Appellant’s denial of the offences. He claimed to be an innocent victim.

15. Ms Milne’s letter is dated 27 November 2017. That reads as follows (so far as relevant):

“Due to the amount of OASys outstanding the Prison Service have decided to prioritise these based on risk. There is a national system to complete this and guidance has been provided to all prisons.  
You have been identified as an individual who does not require a full OASYS assessment due to the nature of your offending. This is positive news and this letter is confirmation that you have been assessed as posing a low risk of harm to all sectors of the community. A review will be completed by the Offender Manager Unit to confirm your low risk and this requires no intervention with an Offender Supervisor from the OMU. Due to the low risk you pose to the community you do not require a sentence plan and therefore will have no objectives to complete. It is important however that you adhere to the prison regime as your behaviour in custody will impact on future assessments by immigration staff, prison staff and potential licence conditions should you be released in the UK.  
This letter, which confirms your low risk of harm assessment, may be sent to your legal representative should they ask for a copy of your OASys.  
...”

16. As the Judge notes, the letter contains no reasons for assessing the Appellant to be at low risk of harm to the community. That is particularly pertinent since, as the Judge notes, the Appellant continued to deny his offending. The index offence was also not his first offence of this nature.

17. The Judge gave adequate reasons for finding as he did that the evidence should be given no weight. As the Judge also observes at [63], even if he had accepted that Ms Milne’s letter should be relied upon as disclosing that the Appellant is at low risk, the risk of reoffending is only one element which the Judge needed to

consider when assessing the public interest in deportation. As the Respondent pointed out in submissions, the public interest in deportation includes other factors, in particular, the deterrent effect of deportation.

18. The Appellant's second ground of appeal does not disclose any material error of law in the Decision.

### Ground one

19. We turn then to the focus of Mr Coleman's submissions. What is said about this in the grounds is that the "Judge firstly failed to give any reasons why the evidence was unreliable other than to allude to considering the evidence in light of other previous credibility findings". It is asserted that the Judge has failed to assess the evidence for himself independently of the previous credibility findings. It is further submitted that the Judge erred by failing to give the evidence referred to at [53] of the Decision any weight at all.

20. We begin by setting out what the Judge says about the evidence on which the Appellant now places reliance at [48] and [49] of the Decision:

"[48] As indicated above, the Judge rejected the reliability of various Bangladeshi documents submitted by the appellant, for reasons set out within his decision. The appellant has now produced some additional documents which were not before the Judge, to which I now refer. For the sake of completeness, I would add that the asylum refusal letter of 8 February 2016, at page 6 thereof, schedules the documents submitted to the respondent when the appellant made his initial asylum claim, which documents include certain photographs relating to the appellant's BNP activities. It appears that the photographs at pp 1-2-132 of the appellant's bundle are those photographs, there being no suggestion otherwise at the hearing.

[49] The documents which were not before the Judge comprise a punishment warrant dated 20 April 2017, arrest and search warrants dated 18 August 2017 and 5 November 2017, a witness summons court order dated 28 November 2017 and a court judgment dated 20 April 2017. Copies of those documents and translations therefore, appear at pp 64-101 of the appellant's bundle and I have the originals thereof, with translations. They are documents which appear, on their fact, to be consistent with the appellant's account in relation to his protection claim. I have considered them in accordance with *Tanveer Ahmed* principles, as part of my consideration of the evidence before me as a whole and in the round (Ahmed\* [2002] UKIAT 00439)"

21. As the Judge noted at [47] of the Decision, the starting point for his consideration of this new evidence is the findings in the First Tribunal Decision. That is not disputed. Guidance as to the approach of a second Tribunal to the findings of a first Tribunal between the same parties is set out in the "Devaseelan" principles (arising from the case of Secretary of State for the Home Department v D (Tamil) [2002] UKIAT 00702) apply. Those principles apply as follows (taken from [39] to [41] of the judgment in that case):

- (1) The first Judge's determination should always be the starting-point.
- (2) Facts happening since the first Judge's determination can always be taken into account by the second Judge.
- (3) Facts happening before the first Judge's determination but having no relevance to the issues before him can always be taken into account by the second Judge.
- (4) Facts personal to the Appellant that were not brought to the attention of the first Judge, although they were relevant to the issues before him, should be treated by the second Judge with the greatest circumspection.
- (5) Evidence of other facts may not suffer from the same concerns as to credibility, but should be treated with caution.
- (6) If before the second Judge, the Appellant relies on facts that are not materially different from those put to the first Judge the second Judge should regard the issues as settled by the first Judge's determination and make his findings in line with that determination.
- (7) The force of the reasoning underlying guidelines (4) and (6) is greatly reduced if there is some very good reason why the Appellant's failure to adduce relevant evidence before the first Judge should not be held against him.

The Tribunal in Devaseelan made clear that those guidelines are not intended to cover every eventuality.

22. It is therefore necessary to begin with what were the findings in the First Tribunal Decision. The Judge sets out the passage of the First Tribunal Decision which records the Appellant's claim at [18] of the Decision. We do not need to repeat those paragraphs. In summary, the Appellant's case is that false claims have been made against him by the Awami league because of his membership and involvement with the BNP. He claims that in 2003, he was accused of possessing illegal arms, that, in 2005, he was accused of destruction of a vehicle and that, in 2007, he was accused of involvement in a fight between the BNP and Awami league. Of relevance to our decision, the Appellant says that in 2010 he was attacked by the Awami league activists as a result of holding a meeting in front of the courthouse. He claims that he was beaten by the police. He says that he was subsequently arrested in 2015 on suspicion of being a terrorist.
23. The Judge referred at [19] of the Decision to the Respondent's position on credibility as summarised at [31] to [72] of the First Tribunal Decision, to the description of the various documents at [49], [51] and [54] to [57] of the First Tribunal Decision and to the findings made about the documents at [85], [90] and [92] to [93] of the First Tribunal Decision. We do not set out those sections in full but it is necessary to point to the salient points made by the Respondent and the First Tribunal as those were the starting point for this Judge's reasoning.

24. We begin by noting that the position taken by the Respondent in the first appeal is not strictly a starting point for the Judge's consideration. Nonetheless, it is something which the First Tribunal should and did take into account when reaching its own credibility findings. In short summary, the points to which the First Tribunal had regard when considering the Appellant's credibility in this respect were as follows (taken from [31] to [72] of the First Tribunal Decision as relied upon by this Judge at [19] of the Decision).
25. First, there was an inconsistency between the Appellant's claim and the background evidence. The Awami League were only part of a coalition government until 2008 which undermined the Appellant's claim to have been at risk in the earlier period.
26. Second, the Respondent pointed to inconsistencies between what was said in the court documents relied upon as to the underlying offences and the offences for which the Appellant claimed to have been arrested. In particular, his account of his arrest in 2010 was that he had been attacked by Awami League members at a meeting that he had been holding whereas the court documents including a charge sheet dated 7 December 2010 recorded the offence as being the burning of a "microbus". The Respondent pointed to the prevalence of fraudulent documents emanating from Bangladesh based on a report from the Immigration and Refugee Board of Canada. The Respondent also pointed out that there was no warrant submitted. The Appellant claimed that there was a warrant against him in 2015.
27. Third, the Respondent relied on the Appellant's ability to travel backwards and forwards between the UK and Bangladesh on his own passport on not one but five occasions at a time when the Appellant claimed to be of interest to the authorities.
28. Fourth, the Respondent also relied on background evidence that there is a functioning judicial system in Bangladesh and the Appellant could therefore return and defend himself against any charges said to be false.
29. Finally, the Respondent pointed to the Appellant's delay in claiming asylum even after his last arrival in the UK. He arrived on 22 April 2015 on which occasion the Appellant was held at the airport and questioned but had failed to mention any fear of return. He did not claim asylum until August 2015 when he was arrested on criminal charges.
30. What is said about the documents previously produced to which we refer at [26] above is contained in paragraphs [49], [51] and [54] to [57] of the First Tribunal Decision to which the Judge refers at [19] of the Decision.
31. The starting point for the Judge was the findings made in the First Tribunal Decision and since those are cross-referred to by the Judge rather than set out in

the Decision, it is appropriate for us to set them out given their importance to our analysis:

[85] I considered that the details as contained in the arrest warrants that the Appellant had produced were not consistent with the Appellant's claimed reasons for arrest. I did accept that the authorities would have needed to have falsified details of the charges for the Appellant's arrest if he in fact had been arrested and accused of acts of terrorism. I saw no reason why they would need to insert different charges. I did not find the Appellant's explanation to be credible.

...

[90] I considered the documents that the Appellant had produced were inconsistent with his claim. I further noted the Appellant had been able to travel to and from Bangladesh on a number of occasions using his own passport. I did not accept it as credible that on every occasion the Appellant had bribed officials as he had claimed in order to leave the country.

...

[92] I noted from the objective material that there was an availability of fraudulent documents in Bangladesh and that there was no difficulty at all for anyone to obtain such documents.

[93] In the light of my findings regarding the Appellant's substantive claim, I concluded that the documents could not be relied upon. I found the Appellant's account simply lacked credibility."

32. Turning back then to the documents which the Judge accepted were "new", those appear at [AB/64 - 101]. They comprise a punishment warrant dated 20 April 2017, arrest warrants and search warrants dated 18 August 2017 and 5 November 2017, a Witness summons court order dated 28 November 2017 and a Court judgment dated 20 April 2017. We observe that they do not include any warrant dated 2015 to which the Appellant claimed to be subject at the time of his asylum claim.
33. Although the documents do not all bear the same court numbers for reasons which are not entirely clear, it appears to be the Appellant's case that those show he has been sentenced to five years' imprisonment for events in 2010. Although there is reference at [35] of the Decision to an arrest warrant being issued in 2010 which informed the Appellant that he was sentenced to five years' imprisonment and a fine (which assertion is lifted directly from [31] of the Appellant's statement) that makes little sense based on the dates of the documents and it appears to have been understood by the Judge that what the Appellant meant by that assertion is that he was sentenced in 2017 for events in 2010. It is presumably on that basis that the Judge accepts at [49] of the Decision that the documents are, on their face, consistent with what the Appellant now claims.
34. However, those documents suffer from the same deficiency as noted in the First Tribunal Decision at [85] and [90] of the First Tribunal Decision namely that the offence for which the Appellant now claims to have been convicted is a different offence to that for which the Appellant claimed to have been arrested when he made his asylum claim. That inconsistency is the one identified by the Respondent in the decision on the original asylum claim as we note at [26] above. It is the inconsistency noted by the Judge dealing with the original asylum claim



which led to the findings which we have identified above. The Judge adopted those findings by cross-reference at [19] of the Decision and by the following reasoning at [50] of the Decision:

“Thus, I have considered the newly-adduced documents in the context of the Judge’s adverse credibility findings, both in relation to the documents which were before him and in relation to other adverse credibility findings of the Judge. Having done so, I am satisfied, even applying the lower standard of proof, that such freshly-adduced documentation is unreliable, considered in the context of the totality of the available evidence which, I reiterate, includes the Judge’s sustainable and rather extensive adverse credibility findings.”

35. The credibility findings to which the Judge there makes reference include (by reason of the adoption of certain paragraphs of the First Tribunal Decision) the other adverse findings based, for example, on the Appellant’s ability to travel backwards and forwards to Bangladesh on several occasions on his own passport without incident.
36. The Judge was entitled to rely on the findings in the First-tier Tribunal. That is not disputed by the Appellant. The First Tribunal Decision having concluded that the core elements of the Appellant’s account lacked credibility, those findings provide the basis on which the Judge was entitled to find that the “new” documents did not alter the position on credibility but merely reinforced the earlier findings.
37. For the above reasons, there is no material error in the Judge’s reasoning about the unreliability of the court documents produced.
38. The second part of the Appellant’s first ground concerns evidence of a slightly different nature, namely evidence given by the Appellant’s partner and sister about what they know of the Bangladeshi authorities’ adverse interest in the Appellant. The evidence contained in the statements is in the same form and we set out therefore only what is said in the Appellant’s partner’s statement about this at [17] to [20] (mirrored at [8] to [11] of the sister’s statement) as follows:
  - [17] Furthermore my partner is facing problems in Bangladesh due to his involvement in politics. My partner was a BNP member in Bangladesh from his college years. He has been arrested by the police on numerous occasions under false charges. He was badly beaten by the police and had to seek medical help in Bangladesh.
  - [18] Before coming to the UK in 2015, my partner was kidnapped RAB [sic], who are powerful authorities in Bangladesh policing the streets of Bangladesh. They are supporters of the current government, Awami League party.
  - [19] My partner’s step-brother, namely [N I C], who was in Bangladesh, called us to inform us that my partner has been kidnapped and they are demanding ransom. We were all so worried about him. [N] gathered money in Bangladesh and gave the money to them. [The Appellant] was released but was in need of medial help. [The Appellant] went to the doctors in Bangladesh. We heard the news that he was alive and we were thankful to God.

[20] We told my partner to leave Bangladesh as his life was in danger. My partner left Bangladesh and entered the UK on the 22<sup>nd</sup> April 2015 [manuscript amendment from "2017"]"

39. We note that neither the Appellant's partner nor his sister claim to have witnessed what is said to have occurred in 2015 first hand and there is no statement from the Appellant's stepbrother confirming his involvement in what is said to have occurred. We accept the point which Mr Coleman makes, however, that this is not a criticism made of the evidence by the Judge. We also accept, as Mr Coleman submitted, that these statements were not before the First Tribunal and as such there are no findings about that evidence in the First Tribunal Decision. It was for the Judge to assess that evidence and we therefore turn to the manner in which he did so.
40. The Judge refers to the statements at [51] of the Decision. That paragraph of course follows [50] of the Decision where the Judge found the court documents relied upon by the Appellant to be unreliable. He then goes on to say the following:
- "[52] I have also taken into account, when assessing the credibility of the appellant in terms of his protection claim, his credibility generally, which is not irrelevant to an assessment of his evidence in terms of his protection claim. I bear in mind that the appellant continues to deny any guilt in relation to the two sets of offences for which he was convicted in 2015 and 2017. Clearly, I will not seek to go behind those convictions, bearing in mind the high standard of proof required in order to secure them, and I bear in mind that the appellant actually pleaded guilty in relation to the 2017 convictions. Despite those convictions, he continues to deny guilt which, I find, impugns his credibility generally.
- [53] Having taken into account the totality of the available evidence, I reiterate that I conclude that the additional documents now produced by the appellant are unreliable and I find the evidence of his two witnesses, as referred to above, to be similarly unreliable in relation to protection issues. I have given their evidence in this regard no weight in the circumstances."
41. As Mr Avery pointed out, the Judge at [51] of the Decision has regard to these statements and accepts that "they indicate personal knowledge of the appellant's problems in Bangladesh giving rise to his protection claim." As such, as Mr Avery noted, the evidence was considered, the Judge accepted that the statements were capable of supporting the Appellant's claim and they were not dismissed out of hand. As Mr Avery also appeared to accept, the Judge could perhaps have given more detailed reasons about why he rejected the contents of the statements as adding no weight.
42. Ultimately, though, we are not satisfied that there is any material error of law disclosed by this ground. As the Judge notes, he had to consider the claim in the round which here included the finding that the court documents on which the Appellant relies are unreliable and that the Appellant himself is generally not to be believed for the reasons given. As such, the Judge was entitled to reject the evidence given by the Appellant's partner and sister when that evidence was

considered holistically alongside the other evidence on which reliance was placed at this hearing and in the previous appeal.

43. For the above reasons, we are satisfied that the Decision does not contain a material error of law. We therefore uphold the Decision.

**DECISION**

**We are satisfied that the Decision does not contain a material error of law. We uphold the decision of First-tier Tribunal Judge Hodgkinson promulgated on 6 March 2018 with the consequence that the Appellant's appeal stands dismissed**

Signed

A handwritten signature in black ink, appearing to read 'E. Smith', written in a cursive style.

Upper Tribunal Judge Smith

Dated: 9 July 2018