



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/06267/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 23 January 2018

Promulgated

On 19 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

M A I

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Reza of JKR Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Easterman promulgated on 11 August 2017 dismissing the Appellant's appeal against a decision of the Respondent dated 14 June 2017 refusing a protection claim.
2. The Appellant is a national of Bangladesh born on 3 July 1981. He entered the United Kingdom in February 2011 as a Tier 4 (General) Student. On 5 December 2012 he made an application as a Tier 1 (Entrepreneur) which was refused on 3 May 2013. He lodged an appeal against this decision which was subsequently withdrawn. The Appellant made a further

application for leave to remain as a Tier 4 migrant which was refused on 9 September 2014. At this point deception was alleged by the Respondent: it was said that the Appellant had made use of a 'proxy tester' in securing an English language certificate that was submitted in support of his earlier application. On 16 November 2014 the Appellant was detained. However, he was granted temporary admission on 22 December 2014. By the 29 February 2016 he was treated as an absconder because he had failed to report. On 21 December 2016 he was encountered working unlawfully. On 27 December 2016 the Appellant claimed asylum.

3. The Appellant's application for asylum was characterised by the First-tier Tribunal Judge as essentially being based on "*political difficulties in Bangladesh*" (paragraph 10). These difficulties were said to result from his own political involvement, and also in part because he had been in a long running land dispute with cousins over land inherited from his father - it was said that his cousins had connections and support with influential members of the Awami League. The Appellant claimed that his opponents had made a false case against him in Bangladesh, and he feared the consequences of such accusations. The false case dates back to events in 2010 and a time when the Appellant had been studying in Dhaka. The Appellant fears persecution at the hands of his cousins and their associates in the Awami League, and, separately, members of the Awami League because of his own political activities.
4. In the premises then, it may be seen that the Appellant's claimed difficulties date back to 2010. Manifestly it is problematic to the Appellant's case that he made no mention of any such difficulties notwithstanding the refusal of applications in 2013 and 2014 - including when detained in 2014. It is to be recalled that he then 'went to ground' in the United Kingdom rather than pursuing protection.
5. It also seems plain and obvious from the materials on file that there are difficulties in respect of the Appellant's case of feared political persecution because of his inability to articulate the nature of the circumstances of his claimed current fear during the course of his asylum interview. At questions 68-70 the Appellant was unable to name any of the people involved in the Awami League whom he said might do him harm. He also appeared to be largely unfamiliar with the details of the charges supposedly brought against him. He was asked "*What crime were you accused of committing?*", to which he replied - "*Mainly as far as I am concerned my representative told me that it was robbery and destruction of houses. Criminal damage.*" (question 99). However, such accusations are very different from those that were put at the centre of his claim before the First-tier Tribunal (and in turn the challenge to the Upper Tribunal), which emphasised that the Appellant had been accused of attempted murder. The Appellant was thereby seemingly unfamiliar at interview with the supporting materials in respect of the charges that were at the core of his case. Such seeming unfamiliarity with his own case is

inevitably significantly problematic to his task of ensuring that his account was believed even at the lower standard applicable in asylum cases.

6. The Respondent indeed did not accept the Appellant's application for protection, and refused it for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 14 June 2017.
7. The Appellant appealed to the IAC.
8. The appeal was dismissed for reasons set out in the Decision and Reasons of the First-tier Tribunal Judge.
9. The Judge in a detailed decision has set out with plain care the germane aspects of the Appellant's narrative account and his supporting documents. Before the First-tier Tribunal the Appellant's narrative account included very detailed references to his political involvement – taking up over 7 pages of his witness statement. Such detail was advanced notwithstanding that at his asylum interview the Appellant had stated in terms that he was not a member of any political party. Also, by the time of the appeal hearing he was able to offer names for his would-be political persecutors.
10. Ultimately the First-tier Tribunal Judge did not accept that the Appellant had offered a credible account and concluded that the documents that he had provided in support of his account were "*fabricated evidence*" (paragraph 88). It is also manifestly clear that the Judge struggled to get a coherent account from the Appellant in respect of many significant aspects of his claim notwithstanding questions being put to him repeatedly: see for example at paragraphs 37, 40, 41, and 87.
11. The Appellant applied for permission to appeal which was granted by First-tier Tribunal Judge Shimmin on 1 November 2017.
12. The Grounds of Appeal essentially raise two bases of challenge. It was considered arguable by Judge Shimmin that Judge Easterman had erred in not applying the case of **Singh and others v Belgium (33210/11)**. Judge Shimmin also considered it arguable that the Judge had "*erred materially by drawing an adverse credibility finding on the basis that since the appellant had an alibi he was not likely to be implicated in the charge against him*".
13. I address the latter matter first. The context is that the charges that the Appellant claims to have been brought against him in Bangladesh relate to matters that had taken place at a time when he had been elsewhere in the

country and therefore could not possibly have been involved. The relevant paragraph in the Decision is paragraph 85. The Judge says this:

“Of course, I accept that it is not unknown in Bangladesh for false cases to be raised against family rivals or political opponents. In this case, there are a large number of people allegedly charged with doing an act which according to the Appellant occurred when he was in Dhaka. It does not seem plausible to me, even with the Bangladesh judicial system in the state that it is, according to the background evidence, that enemies of the Appellant would be so foolish as to falsely name him in an event which he could not have attended, if he was active in the home area around election times, there must have been many events that they could have accused him of being involved in. It makes little or no sense that they should choose to involve him in an incident, where he simply could not have been present”.

14. The grounds of challenge plead that the Judge had in effect misunderstood the nature of being accused falsely of crimes in Bangladesh. It was said that the purpose of such cases is to harass and intimidate people, and drive them away from their locality or country - not necessarily to obtain their conviction. It was argued that it may well be the case that in due course a person would be able to acquit themselves of any such charges, but it was the harassment and the risk of detention and ill-treatment during detention that provided the ‘teeth’ of such a mechanism. It was submitted that the Judge seemingly misunderstood the nature of false cases.
15. I do not accept that submission. It seems to me that the Judge expressly recognised that such a mechanism might be used against rivals or political opponents, and inherent in such recognition is that the Judge understood the effectiveness of such a strategy. What the Judge was saying, however, was that in his evaluation on the facts of this particular case it was not plausible that somebody wishing to use such a strategy to do harm to the Appellant would implicate him in a case that he could so readily answer. If somebody genuinely wished to visit harm upon the Appellant by bringing into play the organs or mechanisms of the State against the Appellant, then it would be reasonable to expect that any false allegations made would be more difficult to deal with or defend.
16. In my judgment it was entirely legitimate of the Judge to have regard to the unlikeness of an enemy constructing such a flimsy case against the Appellant, and to factor that into his overall consideration of the Appellant’s credibility (including the overall consideration of the credibility of the supporting documents provided by the Appellant). In any event, it seems to me that the challenge does not in reality identify anything that might be considered to be an error of law: it is essentially a disagreement with the reasoning process and an attempt to re-argue the case.

17. The primary ground of challenge relied upon is in respect of the case of **Singh and others v Belgium**.
18. I note that the Appellant's supplementary bundle before the First-tier Tribunal included a copy of the decision in **Singh**, and the Appellant's Skeleton Argument before the First-tier Tribunal in referencing the case stated "*The case potentially signals the end of the unedifying era of **Tanveer Ahmed** the case deciding the documents stand and fall with general credibility of the document holder*". It is unfortunate that that the Skeleton Argument made no reference to either of the cases of **MJ (Singh v Belgium: Tanveer Ahmed unaffected) Afghanistan [2013] UKUT 00254 (IAC)** or **NA (UT Rule 45: Singh v Belgium) Iran [2014] UKUT 00205 (IAC)**, which very clearly indicate that the era of **Tanveer Ahmed** had far from come to an end, but that the case of **Tanveer Ahmed** was in substance unaffected by the decision of **Singh v Belgium**.
19. **MJ**, as its case title suggests, considered **Tanveer Ahmed** was unaffected. I note in particular that paragraph 35 of **Tanveer Ahmed** was cited with approval: "*In the absence of a particular reason on the facts of an individual case, a decision by the Home Office not to make enquiries, produce in-country evidence relating to a particular document or scientific evidence should not give rise to any presumption in favour of an individual claimant or against the Home Office*". **MJ** was approved in **NA**, which also addressed the power of the Tribunal to direct the Respondent to undertake enquiries.
20. I have also noted paragraph 196 of the UNHCR Handbook, which is also referenced in the Grounds of Appeal. However, this is more applicable in respect of obtaining documentary evidence rather than methodology of evaluation: "*...a person fleeing from persecution will have arrived... very frequently even without personal documents*"; "*...it may be for the examiner to use all the means at his disposal to produce the necessary evidence...*".
21. The ground of challenge in my judgement is inchoate. It was pleaded that "*the Respondent had plenty of time to make enquiries as to the genuineness of [the Appellant's] case*", and it was submitted that there was a shared burden of proof. It was said that it was "*unfair to dismiss the documents pertaining his criminal case without examining their authenticity*". I invited Mr Reza to articulate precisely what it is that he considered the Judge should have done in light of **Singh v Belgium**, and in light of the fact that the Respondent had not conducted her own specific investigation into the documents of the Appellant. No meaningful suggestion was forthcoming.

22. It was the case that the Appellant had not requested an adjournment in order that a Direction might be given to the Respondent to pursue such enquiries, and in the circumstances it is difficult to see what it was that the First-tier Tribunal Judge was expected to do other than to determine the appeal on the evidence before him by reference to the applicable principles and case law - which necessarily meant by reference to the case of **Tanveer Ahmed**. Indeed, that is exactly what the Judge did.
23. It also seems to me in the circumstances that I have adverted to above that it is absolutely clear why the Respondent did not consider it necessary to run individual checks on the supporting documents provided by the Appellant in respect of the claim to be the subject of false accusations and charges in Bangladesh. The Appellant's asylum claim was littered with problematic issues together with a lack of detail such that it was not necessary to go any further than the Respondent did in determining the application. In my judgment Judge Easterman was entirely right in observing in the course of his Decision that there was no justification to pursue further enquiries in respect of the documents - "*...in my view [Singh] does not apply to these documents*" (paragraph 82). Moreover, and more particularly, Judge Easterman was entirely correct thereafter to go on to consider the case applying the usual and established **Tanveer Ahmed** approach.
24. The conclusions thus reached by the Judge were entirely sustainable on the basis of the evidence before him and the analysis set out in the body of the Decision. Indeed it seems to me not only was the Decision sustainable but it was one in respect of which the Appellant could hardly have been surprised.

Notice of Decision

25. The decision of the First-tier Tribunal contained no error of law and accordingly stands.
26. The appeal remains dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **15 February 2018**

Deputy Upper Tribunal Judge I A Lewis