



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

Appeal Number: PA/07094/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13<sup>th</sup> February 2018**

**Decision & Reasons  
Promulgated  
On 6<sup>th</sup> March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**[M M]  
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Patyna instructed by Davies, Blunden & Evans  
Solicitors

For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Bangladesh, appealed to the First-tier Tribunal against a decision of the Secretary of State of 6<sup>th</sup> July 2017 to refuse his application for asylum in the UK. First-tier Tribunal Judge David Clapham dismissed the appeal and the Appellant now appeals to this Tribunal with permission granted by First-tier Tribunal Judge Saffer on 8<sup>th</sup> December 2017.

## **Preliminary Issue**

2. At the hearing Ms Patyna sought to introduce documents lodged on 6<sup>th</sup> February 2018 which she said go to the issue of the delay in seeking asylum. She submitted that following the First-tier Tribunal appeal hearing the Appellant made a complaint against his solicitors acting at that time and that complaint was upheld. She submitted that the new representatives had sought to introduce the evidence contained in the further bundle. However no details of the complaint were put forward. I noted that Ms Patyna herself represented the Appellant at the hearing in the First-tier Tribunal. It was not clear on what basis this evidence had not been previously submitted. I decided not to admit the documents prior to the error of law hearing but would review the decision should I find an error of law.

## **Background**

3. The background to this appeal is the Appellant claims that he is a member of the Rohingya ethnic group and that his family left Myanmar in 1962/1963 for Bangladesh. He said that his father and brothers worked in a factory called Modern Bricks and Textiles Ltd which was owned by a man who came from Myanmar and that the Appellant himself began working there in 1996. The Appellant says that on 6<sup>th</sup> May 1998 he witnessed a violent attack at Modern Bricks and Textiles Ltd during which gunshots were fired and two people were murdered. The Appellant talked to the police about what he had seen. The Appellant later found out that those behind the attack at the factory were members of the Awami League. He claims that about a week later he was threatened by these men who were linked to the Awami League and told that he would be killed if he went to the police or provided a statement about the incident in the factory. He claims that he was threatened on a second and then a third occasion by these men.
4. The Appellant obtained a Tier 4 (Student) Visa on 17<sup>th</sup> August 2006 and came to the UK on 16<sup>th</sup> September 2006. The Appellant claims that he visited Bangladesh for a few days in 2008. His applications for subsequent extensions of his leave to remain were granted until 28<sup>th</sup> July 2014. The Appellant made an application for leave to remain on the basis of ten years' residence and family and private life on 22<sup>nd</sup> August 2014 and this was refused on 24<sup>th</sup> November 2014. The Appellant claimed asylum on 4<sup>th</sup> January 2017.

## **The submissions**

5. At the hearing Ms Patyna outlined the four Grounds of Appeal. The first ground contends that the judge erred in his approach to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Ms Patyna submitted that this is an error because Section 8 is not a determinative factor on credibility as set out in the decision of **IT Cameroon [2008] EWCA Civ 878** at paragraphs 14 and 16.

6. It is contended in the second Ground of appeal that the judge failed to engage with the documentary evidence and failed to provide reasons. Ms Patyna submitted that the judge made a key error at paragraph 52 where the judge said that he did not accept the credibility of the Appellant's account "because I consider that if the Appellant had been the victim of threats as he claimed such that he felt he had a well-founded fear he could and would have claimed asylum." She submitted that this is the only paragraph that deals with the Appellant's credibility.
7. Ms Patyna submitted that paragraphs 47 and 51 seems to conflate credibility with internal relocation and that one should not be left to guess the findings made by the judge. In her submission the judge could have found that the attack in 1998 happened but that the Appellant had not been pursued or that he had only been pursued a limited number of times or that he was still at risk. However in her submission it is not possible to know from the determination what the components of the findings were and what weight the judge gave to crucial aspects of the Appellant's case.
8. The second main part of Ms Patyna's submissions in relation to the credibility findings was that the judge appeared to have failed to have regard to the documentary evidence. At paragraph 52 the judge said "I do not attach weight to the documents relied on in the Appellant's claim." In her submission this amounts to a bare statement rather any reasoning in relation to the credibility of the Appellant's documents. She submitted that it appears from paragraph 52 that the judge formed his view in relation to credibility and then decided not to attach any weight to the documents. She submitted that this is an error of law as identified in **Mbanga** (AG to insert quote) or **MK** (AG to insert quote).
9. Ms Patyna submitted that at paragraph 50 the judge said that the Appellant's position was "vague" but he erred in that he failed to reach a conclusion in relation to this matter. She submitted that there is insufficient reasoning and that it is not clear how the judge's assessment that the appellant's position was vague went to the overall credibility assessment.
10. It is contended in the third ground that the judge erred in his approach to internal relocation. Ms Patyna contended that the judge failed to engage with the objective evidence in relation to sufficiency of protection and internal relocation. She submitted that at page 74 of the Appellant's bundle details the effectiveness of policing and concludes that corruption is endemic. In concluding at paragraph 47 that the Appellant could have gone higher up the chain, the judge failed to take account of the country information.
11. In advancing Ground 4 Ms Patyna submitted that at paragraph 51 the judge questioned whether there is any up-to-date reliable documentary evidence in relation to ongoing adverse interest in the Appellant. She referred to pages 61, 64 and 66 of the Appellant's bundle which she said contained evidence of ongoing interest in the Appellant and his family.

She accepted that if the judge had said that he had looked at this documentary evidence but did not find it credible that would be enough but the judge had made no reference at all to this documentary evidence in the determination. She submitted that the phrasing in paragraph 51 is material. The judge said; “given that we are now in 2017, I question whether there is any up-to-date information of a reliable nature to suggest that the Appellant is as of now of adverse interest to anyone in Bangladesh.” In her submission the judge should have considered whether there is a risk that these people are interested in the Appellant and not the other way round. She said that the judge did not go through the documentary evidence to say that he had not accepted it and therefore the phrase “I question...” is problematic. The judge also said “There must always be the possibility of assailants who are allegedly interested in the Appellant in 1998 having lost that interest now.” She submitted that this shows that the judge applied the wrong standard of proof and looked at the issue of risk the wrong way around. She submitted that these defects are not cured by the overall decision and that all errors compound one another.

12. In her submissions Ms Brocklesby-Weller submitted that the judge was wholly entitled to take the Section 8 point against the Appellant. However in her submission it is apparent from paragraph 46 that the judge attached weight to it, but it is clear that this matter is not determinative. She referred to paragraph 21 of **JT Cameroon** which states that weight is a matter for the fact-finder. She submitted that it does not matter that this at the beginning of the findings given that the judge has dealt with all relevant matters. She submitted that the judge had made sufficient other findings in relation to credibility. She pointed to paragraphs 47 and 48 which go to the credibility and plausibility of the claim. She noted that at paragraph 47 the judge referred to the Appellant’s visit to Bangladesh in 2008 and submitted that this goes to risk and internal flight. She contended that at paragraph 41 the judge clearly dealt with the Appellant’s claim at its highest based on the passage of time, and at paragraph 52 the judge concluded that even if the Appellant is credible there is no real risk. In her submission the judge did not need to deal with all of the documentary evidence given that he dealt with the Appellant’s claim at its highest at paragraph 52. In her submission the documentary evidence or background evidence does not specifically identify the Appellant. She submitted that in these circumstances the assessment of internal relocation and sufficiency of protection do not bite.
13. In response Ms Patyna submitted that, although **JT Cameroon** does say that weight in relation to Section 8 is a matter for the judge, this is only if it can be shown that the judge has properly assessed all of the evidence in the round. In her submission there was here no engagement with the documentary evidence or background evidence therefore the Section 8 assessment was not sufficient. She submitted that there is no clarity between paragraphs 46 to 52 as to where the credibility assessment begins and ends and where the findings in relation to risk are made.

## **Error of Law**

14. I firstly note that the judge set out all of the evidence contained in the Appellant's statement at paragraphs 8 to 17. The judge noted the Appellant's oral evidence at paragraphs 18 to 44. In the record of examination-in-chief and cross-examination and there is reference to the documents in the bundle on a number of occasions. At paragraph 19 there is reference to page 64 of the Appellant's bundle. At page 20 there is reference to page 69. I note that at paragraph 19 the Appellant accepted that the document did not relate to any of his family. At paragraph 19 of the decision the judge notes that the Appellant referred to his brother being referred to in the document at page 64. The judge accepted that a newspaper cutting at page 69 referred to Rohingya people and that his brothers were mentioned there [20]. As these matters were set out in significant detail I accept that the judge was aware of the documents submitted by the Appellant.
15. In considering the judge's assessment of the documentary evidence and in particular his conclusion at paragraph 52 that he did not attach weight to the documents relied on in the Appellant's claim I bear in mind the guidance in **MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)** set out at paragraph 2 in the head note:

“(2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons.”
16. However paragraph 52 must be read in the context of the decision as a whole. The judge was clearly aware of the documentary evidence submitted by the Appellant. At paragraph 51 the judge concludes that there is no up-to-date reliable evidence to suggest that the Appellant is as of now (in 2017) of adverse interest to anyone in Bangladesh. I do not agree with Ms Patyna's suggestion that the use of the phrase “I question whether” undermines the finding here. Ms Patyna pointed me to a number of pages in the bundle including page 61 which appears to have been issued in March 2012, page 64 which appears to relate to January 2013 and appears to name the Appellant's brothers and page 66 which is from January 2013 and does not relate to the Appellant's family. However Ms Patyna did not point me to any more recent evidence in relation to any alleged ongoing threats or to indicate in any way that the Appellant is of ongoing adverse interest to anyone in Bangladesh. Therefore the judge's conclusion at paragraph 51 that there was no evidence to suggest that the Appellant is now of adverse interest to anyone in Bangladesh was open to him on the basis of the evidence. In my view it is clear from reading the decision as a whole that the judge gave sufficient consideration to the documentary evidence.

17. The judge began his assessment of credibility with detailed consideration of Section 8 at paragraph 46. There were two elements of Section 8 which he considered adversely affected the Appellant. There is the fact that the Appellant made a claim for asylum after being notified of the decision to refuse his private or family life claim. Further there had been a very considerable delay in the Appellant making an asylum claim.
18. At paragraph 46 the judge said that he attached “weight and significance” to the fact that the Appellant made a claim for asylum after being notified of a decision to refuse his claim in relation to private and family life. The judge noted that there had been “very considerable delay” in making an asylum claim and that throughout the years the Appellant was in contact with the Home Office in making his various applications for extensions to stay. The judge said that he did not accept that the Appellant was not aware of the asylum process [49]. It is clear from paragraphs 46 and 49 that the judge attached significant weight to the Appellant’s delay in claiming asylum.
19. In this case the Appellant had arrived in the UK in 2006 and did not claim asylum until 4 January 2017. This was a significant delay which the judge was entitled to consider. In my view it was clear that the judge was entitled to attach weight to this factor as he said at paragraph 46, as outlined by Pill LJ at paragraph 21 of **JT Cameroon**:

“Section 8 can thus be construed as not offending against constitutional principles. It is no more than a reminder to fact-finding tribunals that conduct coming within the categories stated in section 8 shall be taken into account in assessing credibility. If there was a tendency for tribunals simply to ignore these matters when assessing credibility, they were in error. It is necessary to take account of them. However, at one end of the spectrum, there may, unusually, be cases in which conduct of the kind identified in section 8 is held to carry no weight at all in the overall assessment of credibility on the particular facts. I do not consider the section prevents that finding in an appropriate case. Subject to that, I respectfully agree with Baroness Scotland's assessment, when introducing the Bill, of the effect of section 8. Where section 8 matters are held to be entitled to some weight, the weight to be given to them is entirely a matter for the fact-finder.”
20. I do not accept Ms Patyna’s submission that the judge made no other credibility findings. At paragraph 47 the judge found that the Appellant had been back to Bangladesh in 2008 and had not encountered any problems. The judge attached weight to this factor as damaging the Appellant’s credibility. Further, at paragraph 48 the judge noted that one of the Appellant’s brothers remains in Bangladesh another factor which the judge considered to have damaged the Appellant’s credibility in relation to his assertion of ongoing risk. A further matter which damaged the Appellant's credibility is set out at paragraph 50 where the judge concluded that the Appellant’s evidence in relation to his whereabouts between 1998 and 2006 was ‘vague’. Whilst Ms Patyna submits that the judge failed to reach a conclusion in relation to his assessment that the

Appellant's evidence was vague in my view it is clear that the judge considered that this vagueness in his evidence and the fact that the Appellant remained in Bangladesh between 1998 and 2006 damaged the credibility of his claim to remain at risk in Bangladesh. This is a significant period of time during which the Appellant was said to have remained in Bangladesh and it was open to the judge to find that this too damaged his credibility. The judge also made credibility findings at paragraph 51 where he considered that the lack of current documentary evidence as to any ongoing risk undermines the Appellant's claim to be of interest to anyone in Bangladesh.

21. Accordingly I am satisfied that the judge did make sufficient credibility findings beyond the findings in relation to Section 8. In my view it is clear that the judge found that the Appellant's claim in relation to events in Bangladesh was not credible but that, in the alternative, even if the Appellant were credible there is no ongoing risk. This was a decision open to the judge on the basis of the evidence before him.
22. I agree with Ms Brocklesby-Weller that if there is no ongoing risk to the Appellant in his home area the issues of sufficiency of protection and internal relocation are not relevant. In any event the judge made sufficient findings in relation to both of those issues. At paragraph 48 the judge found that the persecutors were non-state agents who were after money, that the Appellant did not take his complaint beyond local police, and that the Appellant returned to Bangladesh in 2008 without encountering any difficulties.
23. On the basis of all of this evidence I am satisfied that the judge did not make any material error of law.

### **Notice of Decision**

The decision of the First-tier Tribunal Judge does not contain a material error of law.

The decision of the First-tier Tribunal is preserved.

No anonymity direction is made.

Signed

Date: 5<sup>th</sup> March 2018

Deputy Upper Tribunal Judge Grimes

**TO THE RESPONDENT**  
**FEE AWARD**

As the appeal has been dismissed there can be no fee award.

Signed

Date: 5<sup>th</sup> March 2018

Deputy Upper Tribunal Judge Grimes