



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

Appeal Number: PA/09878/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 26 April 2018**

**Decision & Reasons
Promulgated
On 14 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

**AA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim, counsel

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 22 September 2017 refusing his application for international protection.

Background

2. The appellant is a citizen of Bangladesh born on [] 1987. He arrived in the UK on 4 September 2009 with a valid student visa and his leave was

subsequently extended in the same capacity until 5 October 2015. On 14 February 2015 his leave was curtailed with no right of appeal because he was unable at that stage to continue to fund his studies.

3. On 20 April 2015 he made a further application for leave to remain based on human rights grounds, but this was refused on 6 July 2015. His appeal against that decision was dismissed and permission to appeal was refused. He became appeal rights exhausted on 2 March 2017. On 20 March 2017 he claimed asylum. His application was refused for the reasons given in the annex to the decision of 22 September 2017.
4. His appeal was heard by the First-tier Tribunal on 2 November 2017. The appellant claimed that he would be at risk of serious harm on return to Bangladesh by reason of his and his father's support for the BNP. He had been attacked and seriously injured on 27 September 2014 during a short return visit to Bangladesh. He believed that the attack was perpetrated by members of the Awami League, but the judge found that there was absolutely no evidence to substantiate this claim. Having reviewed the evidence, he found that the appellant had failed to show either that he had a well-founded fear of being persecuted for reasons of his political opinion or that he had a genuine subjective fear of being returned to Bangladesh.

The Grounds of Appeal

5. In the grounds of appeal, a number of challenges are made to the judge's decision. It is argued firstly that the judge wrongly refused an application for an adjournment and failed to give adequate reasons for his refusal. It is further argued that he failed properly to consider para 339K of the Rules or to point to reasons why the serious harm the appellant had suffered when assaulted would not be repeated; to give adequate reasons for his findings particularly in respect of his comments on the name of the appellant's father, failing to realise that the translations he referred to were in fact transliterations of Bengali names into English; to have regard to the weight to be attached to the documentary evidence and in particular the FIRs in the absence of verification by the respondent; to assess the risk in the light of the appellant's sur place activities and to give adequate reasons why para 276ADE(1)(vi) was not met.
6. After Mr Karim had made his submissions on the first ground, whether the judge had erred in law in refusing an adjournment, Mr Tufan indicated that he had real concerns about whether the judge had dealt properly with that issue and, whilst making no concessions on the other grounds, he did not seek to resist that ground.

The Error of Law

7. The application for an adjournment was made at the beginning of the hearing on the basis that the appellant had originally instructed other counsel and that counsel appearing had only just taken over the case, the

appellant had also only recently prepared his witness statement which was still unsigned and undated and some of the documents in the appellant's bundle had been badly translated. The application was opposed by the Home Office Presenting Officer on the basis that there had been no application for an adjournment because of any of these apparent problems prior to the hearing and the appellant's solicitor had had plenty of time to prepare the case properly and to sort out any problems relating to the translation of documents. The judge agreed with this submission and refused the application.

8. When assessing whether a refusal to grant an adjournment request is erroneous in law, the issue in substance is whether the refusal deprived the affected party of his right to a fair hearing. In Nwaigwe (adjournment: fairness) [2014] UKUT 418, the then President, McCloskey J, said:

"Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing?"

On this issue, see also SH (Afghanistan) v Secretary of State [2011] EWCA Civ 1284.

9. The factor which gives rise to concern in the present case is that the application was based in part on the fact that some of the documents in the appellant's bundle had been badly translated. In his submissions Mr Karim made the point that the judge had drawn an adverse inference at [52] from the fact that the FIRs produced in evidence did not identify the appellant's father as he was named on the visa application. Further, a newspaper report referred to a particular individual, but the judge said that there was no evidence that the named individual was the same person as the appellant's father [53]. These comments provide support for the argument that the claimed inadequacies in the translation of some of the documents had a bearing on the assessment of the credibility of the appellant's account. His solicitors may well have had time to sort out this problem, but the fact remains that counsel had concerns about the translations and the appellant was not given an opportunity to resolve those concerns on matters capable of affecting the outcome of the appeal.
10. In these circumstances, I am satisfied that Mr Tufan's concession is rightly made and that the judge erred in law in refusing an adjournment in the particular circumstances of this appeal. The representatives submitted that the proper course was for the appeal to be remitted to the First-tier Tribunal for a full rehearing. In the light of the Senior Presidents Practice Statement I agree that that this is the proper course. I need not deal with the other grounds which remained in issue between the parties.
11. I note for the record that on behalf of the respondent, Mr Tufan submitted two further documents, a copy of the decision relating to the appellant in the earlier appeal at Harmondsworth on 19 July 2016 and a record of the

appellant's convictions on 16 August 2016 at North East London Magistrates Court. On behalf of the appellant, Mr Karim produced a copy of the recent COI report on Bangladesh published in January 2018.

Decision

12. The First-tier Tribunal erred in law and the decision is set aside. It is remitted to the First-tier Tribunal at Taylor House for reconsideration by way of a full rehearing before a different judge.

Signed H J E Latter

Dated: 8 May 2108

Upper Tribunal Judge Latter