Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/10497/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 3rd April 2018	**On 4th April 2018**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between
A M
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Bangladesh born in 1981. He arrived in the UK in 2009 as a Tier 4 student migrant. He had leave to remain in this capacity until 2012. He then overstayed his leave. He claimed asylum in 2017 when he was detained as an overstayer. His claim was refused on 3rd October 2017. His appeal against the decision was dismissed on all grounds by First-tier Tribunal Judge Telford in a determination promulgated on the 17th January 2018.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Keane on a Robinson obvious basis that it was arguable that the First-tier judge had erred in law in the assessment of the credibility of the appellant and by reference to the screening interview, although the grounds put forward by the appellant were not arguable.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

4. On the day of the hearing a request was received from the appellant to adjourn the hearing due to health reasons. He stated that he had been vulnerable since his release from detention and had some psychological issues. He had tried to book the barrister who had represented him in the past, but this person was not available as he was booked to do a bail hearing. He said it would be unjust not to adjourn. A large number of medical notes from Heathrow Immigration Removal Centre with blood test results were attached and some repeat prescriptions. Ms Everett opposed the adjournment of the hearing.

5. I decided that it was not necessary in the interests of fairness to adjourn the hearing. The appellant had put forward no cogent evidence he was unwell at the current time. He had not claimed he was unable to obtain any legal representation for today: if his previous barrister was booked he should have sought another appropriately qualified counsel. He had had a month and a half notice of the hearing. In any case his own grounds had not been seen as raising any arguable error of law and so it was for me to determine whether the arguable Robinson obvious issues raised in the grant of permission to appeal were in fact errors of law. This was not a matter the appellant was at all likely to be able to assist me with.

Submissions – Error of Law

6. The origin grounds of appeal put forward by the appellant, who as noted above currently acts in person although at the First-tier Tribunal hearing he was represented by a solicitor, are that the First-tier Tribunal failed to appreciate that he is a BNP activist and that as is demonstrated in the Home Office CIG he is at risk of serious harm. There was also a failure to appreciate that he had been wrongly convicted of killing an MP and thus he would be persecuted for this if he returned to Bangladesh. It is argued that impermissible weight had been placed on the “outside story” and that there was a failure to give adequate reasons and many issues remained unresolved.

7. Ms Everett argued that in fact the reliance on the screening interview had been done in a permissible way at paragraphs 22 to 27 of the decision. She submitted that ultimately the key issues and documents supporting the appellant’s claim were examined by the First-tier Tribunal Judge and that the conclusion that the appeal should be dismissed was sufficiently reasoned and rational in all the circumstances.

Conclusions – Error of Law

8. The way in which the decision is written does raise concerns. The First-tier Tribunal Judge starts his findings section of the decision with the statement: "I find his whole account incredible." The tone of the decision is immoderate from the start using terms such as "risible", "nonsense", "not a scintilla of credible support", "self-serving", "blatant untruth", woefully inadequate", and "his answer was the untruth". The decision is not written in a calm judicial tone which would assist in explaining clearly to the losing party why he has lost. In addition the decision is, at points, hard to follow as there is no clear explanation of what the pieces of evidence are purported to contend or support before the Judge starts to deride them: for instance with respect to the Rule 35 Report, at paragraph 33 of the decision, there is no description of what is in the report before the Judge commences with his attack on its worth.

9. However, I have concluded that ultimately the decision does deal with the evidence before the First-tier Tribunal and come to conclusions which are reasoned and rationally open to the Judge for the reasons I set out below, and thus does not materially error in law.

10. The First-tier Tribunal Judge does remind himself at paragraphs 6 and 20 of the decision of the lower civil standard of proof applicable in asylum appeals and also of the need to consider the evidence collectively. Credit is also given to the appellant for having a degree of political understanding consistent with the background country evidence, although this is not found to suffice to make out his case due to the other problems with the evidence, see paragraph 44 of the decision.

11. The conclusions with respect to the screening interview are prefaced with the fact that these notes are usually rightly treated with caution, see paragraph 22 of the decision. It is only in the particular circumstances of this case where the failure to mention a wrongful conviction for the murder of an Awami League MP at the screening interview is seen as relevant, and these are set out in detail at paragraphs 22 to 27. These are, in summary, the failure to mention the wrongful murder conviction either as a key issue in his claim or in response to a specific screening question about accusations of having committed an offence; the failure for his solicitors to have addressed this after the screening interview and prior to the full interview; the confirmation at the full interview that his screening answers were true and accurate; and only raising the issue of a contended intimidating interview style at the screening interview in a late complaint after the second full interview. I find that this was a rational consideration of this issue and that weight in these limited circumstances could fairly be given to the failure to mention the wrongful murder conviction at the screening interview.

12. The First-tier Tribunal rightly considers the delay in claiming asylum to be against the credibility of the appellant. Consideration is given to the

letters he had submitted in support of his claim. I find it was open to the First-tier Tribunal to give little weight to the letter from the appellant's mother. The letters from the BNP are analysed at paragraphs 30 and 32 of the decision in the context of the appellant's oral evidence, which was an approach rationally open to the Judge, and valid negative conclusions were reached due to inconsistencies between what was said in the letters and the rest of the evidence. It was also reasonable for the First-tier Tribunal to have consideration to the absence of other documents relating to the charge and conviction of murder at paragraph 31 of the decision. Whilst I have criticised the lack of description of the Rule 35 report the analysis of why it does not add to the appellant's case was rationally open to the Judge, see paragraph 33 of the decision. It was also open to the First-tier Tribunal to conclude that the appellant's behaviour after his conviction and his departure from Bangladesh did not fit with his description of being in hiding at that time, see paragraph 36 of the decision.

13. I am therefore satisfied on the totally of the evidence before the First-tier Tribunal that the finding that the appellant had not shown his protection claim to be credible, and thus to show on the lower civil standard of proof that he was at real risk of serious harm if returned to Bangladesh was sufficiently reasoned and rationally open to the First-tier Tribunal.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

2. I uphold the decision of the First-tier Tribunal dismissing the appeal on protection and human rights grounds.

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed: Fiona Lindsley Date: 3rd April 2018
Upper Tribunal Judge Lindsley