Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11602/2017**

THE IMMIGRATION ACTS

Heard at Field House
On 13 April 2018

Decision & Reasons Promulgated
On 26 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

ABU [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Jorro (counsel) instructed by Hunter Stone Law
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge AA Wilson promulgated on 15 December 2017, which dismissed the Appellant's appeal on all grounds .

Background

3. The Appellant was born on [ ] 1990 and is a national of Bangladesh. The appellant entered the UK as a student on 14 September 2009. The respondent extended leave to remain until 23 September 2014. On 17 September 2014 the appellant applied for leave to remain in the UK outside the rules. That application was refused on 22 December 2014. On 2 March 2016 the appellant applied for leave to remain in the UK under the Immigration (EEA) Regulations 2006. The respondent refused that application. On 27 June 2017 the appellant made a protection claim which the respondent refused on 26 October 2017.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge AA Wilson ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 15 January 2018, Judge Shimmin gave permission to appeal stating

> "1. The appellant seeks permission to appeal against the decision of First-tier Tribunal Judge AA Wilson promulgated on 15 December 2017, dismissing the appellant's appeal against the Secretary of State's decision to refuse international protection.
>
> 2. It is arguable that the Judge has erred in law in failing to consider, or properly consider with sufficient reasoning, the appellant's human rights claim.
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> 3. It is arguable that the Judge has materially erred in failing to consider the background evidence before him relating to the appellant's assertions that the authorities are monitoring Facebook activities.
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> 4. It is arguable the Judge has materially erred in failing to give adequate reasons why the appellant would not be at risk on return, having been an activist in the UK.
>
> 5. I grant permission on all grounds."

The Hearing

5. (a) For the appellant Mr Jorro moved the grounds of appeal. He reminded me that the appellant is a Bangladeshi national and told me that the Judge accepts the appellant's account that he has been a student activist both in Bangladesh and in the UK. He told me that the Judge found that the appellant has a political profile, but at [8] of the decision, the Judge says that he cannot find objective evidence to support the appellant's claim to be at risk on return. He took me to page 405 and 406 of the appellant's bundle and told me that there is clear evidence that the Bangladeshi authorities monitor social media, including Facebook

accounts. He told me that the appellant has railed against the current Bangladeshi government on his Facebook account

(b) He told me that the Judge failed to take account of material evidence in reaching his decision. He told me that the Judge's decision is inadequately reasoned, and that the Judge fails to resolve conflicts in the evidence. He referred me to a number of pages in the bundle of materials which was before the Judge which, he said, the Judge did not take account of, and which, he said, are fully supportive of the appellants claim. Mr Jorro told me that the Judge's consideration of the risks to this appellant on return to Bangladesh betrays a lack of anxious scrutiny of the evidence provided.

(c) Mr Jorro told me that the decision is devoid of consideration of the appellants ECHR grounds of appeal. He urged me to set the decision aside. He reminded me that a rule 15 (2A) notice has been intimated.

6. (a) For the respondent, Mr Clarke told me that the decision does not contain errors, material or otherwise. He took me to the second sentence of [11] of the decision, where the Judge records that no ECHR grounds of appeal were argued before him. He said that the Judge cannot be faulted for the absence of findings on matters which were not placed before him.

(b) Mr Clarke took me to the background materials and told me that they did not support the appellant's claim that his Facebook account is monitored by the Bangladeshi authorities. He told me that the Judge made findings which were open to the Judge on the evidence placed before him.

(c) Mr Clarke turned his attention to the third ground of appeal and told me that the Judge gave proper consideration to risk on return. At [8] of the decision, he told me that, the Judge finds that there is no evidence of any interest in the appellant because of his activities in the UK, and that at [10] of the decision the Judge found that when the appellant left Bangladesh he was not have any interest Bangladeshi authorities. He urged me to dismiss this appeal and to allow the Judge's decision to stand.

Analysis

7. Between [1] and [5] of the decision the Judge sets out the background to this case. At [6] and [7] the Judge does little more than summarise the evidence, although some of the Judge's findings of fact are filtered throughout [7] of the decision. The focus in the Judge's decision lies between [7] and [10]. There, the Judge finds that the appellant has been active in BNP politics both in Bangladesh and in the UK. He bemoans the lack of either background or expert evidence, and finds that although the appellant has a political profile, there is insufficient evidence to suggest that there is any risk to the appellant on return to Bangladesh.

8. At [5] the Judge records that he has evidence from Mohammed Hussain together with a letter from the general secretary of BJSD and a letter of support from the president of the BNP in London. At [8] the Judge records that that evidence is that Facebook activity is monitored by the Bangladeshi authorities. At [10] the Judge rejects the evidence from BNP members in the UK because they are opposed to the Bangladeshi government.

9. The Judge does not set out a clear analysis of the evidence that he heard nor does the Judge explain why he rejects the evidence of the appellant's witnesses.

10. The Judge says that he has a 421 page bundle of evidence for the appellant, but no meaningful analysis of the evidence contained in that bundle is carried out in the Judge's decision. At page 126 of the appellant's bundle there is a document which appears to be a warrant for the appellant's arrest. Despite the apparent existence of an arrest warrant, at [7] and [10] of the decision the Judge does not explain why he finds that there is no risk of prosecution (for this appellant) if returned to Bangladesh. At 406 of the appellant's bundle there is evidence (in the annual Human Rights Report 2016) that the Bangladeshi authorities monitor social media including Facebook.

11. The appellant's bundle contains evidence of Facebook posts made by the appellant which are stridently critical of the current Bangladeshi regime.

12. Although the Judge finds that the appellant has a political profile, the Judge does not carry out a careful analysis of the evidence of the appellant's supporting witnesses. The Judge incorrectly says that none of the background material supports the appellant, when in fact some of the background material manifestly does support his argument about risk on return. As a result, there is inadequate consideration of risk on return.

13. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was 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 was unlikely to satisfy the requirement to give reasons.

14. The Judge's treatment of ECHR grounds of appeal is a little confusing. The Judge clearly dismisses the appellant's appeal on human rights grounds. At [11] the Judge records that

> "There was no human rights matters argued before me."

15. The original notice & grounds of appeal (bringing this case to the First-tier Tribunal) provides no specification of an ECHR ground of appeal.

There is simply a bald assertion that removal would be unlawful under the Human Rights Act 1998. There was no evidence driving at article 8 ECHR grounds of appeal before the First-tier Tribunal.

16. In Sarkar v Secretary of State for the Home Department [2014] EWCA Civ 195, the Court of Appeal indicated that, although Article 8 and section 55 were mentioned in the Notice of Appeal, where no evidence had been adduced or submissions made before the First-tier Tribunal to support a claim under Article 8 of the ECHR, it could be treated as abandoned. The Court of Appeal said that even if that was wrong there was evidential basis for the First-tier Tribunal to find in the appellant's favour in those circumstances. The Upper Tribunal could not be said to have erred in refusing to allow permission to appeal on that ground. Additionally, when re-making the decision following the grant of permission to appeal on an unrelated ground, section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007 did not require the Upper Tribunal to carry out a complete rehearing of the original appeal.

17. There is nothing wrong with the Judge's summary dismissal of the ECHR ground of appeal. The material error of law in the Judge's decision relates to the analysis of the evidence from the appellant's witnesses and the analysis of the background materials, which leads to inadequate reasoning in relation to risk on return.

18. As the decision is tainted by material errors of law I must set it aside. I am asked to remit this case to the First -tier. I consider whether or not I can substitute my own decision, but find that I cannot do so because of the extent of the fact-finding exercise necessary.

Remittal to First-Tier Tribunal

19. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
>
> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

20. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re-hearing is necessary.

21. I remit this case to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge AA Wilson.

Decision

22. The decision of the First-tier Tribunal is tainted by material errors of law.

23. I set aside the Judge's decision promulgated on 15 December 2017. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed Paul Doyle Date 23 April 2018

Deputy Upper Tribunal Judge Doyle