



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

Appeal Number: PA/12833/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 3 October 2018**

**Decision & Reasons
Promulgated
On 15 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

**SM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Islam, Counsel instructed by E1 Solicitors

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

DECISION AND REASONS

1. I make an anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in order to protect the anonymity of the Appellant who claims asylum. This direction prohibits the disclosure directly or indirectly (including by the parties) of the identity of the Appellant. Any disclosure and breach of this direction may amount to a contempt of court. This direction shall remain in force unless revoked or varied by a Tribunal or Court.

2. This is an appeal against the decision of First-tier Tribunal Judge Henderson in which she dismissed the appeal of the Appellant, a citizen of Bangladesh, against the Secretary of State's decision to refuse asylum and issue removal directions.
3. The application under appeal was refused on 24 November 2017. The Appellant exercised his right of appeal to the First-tier Tribunal. The appeal came before Judge Henderson on 13 June 2018 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Andrew on 13 August 2018 in the following terms

I am satisfied that the Judge made an error of fact in that she said at paragraph 26 of her decision the Appellant accepted he returned to Bangladesh in 2009 and left again using his own passport. This may well have led to an error of law in her assessment of the Appellant's credibility. Further she did not assess the risk on return to the Appellant bearing in mind his political profile, although it is far from clear from the decision as to whether this was accepted.

I accordingly find arguable errors of law.

Background

4. The history of this appeal is detailed above. The Appellant is a citizen of Bangladesh born on 21 June 1987. He arrived in the United Kingdom on 25 July 2009 as a working holidaymaker and overstayed when his visa expired on 8 July 2011. On 28 October 2014 the Appellant made an application for leave to remain on human rights grounds which was refused on 6 June 2015. The Appellant was placed on reporting conditions and detained off reporting for removal on 28 February 2017. Following further representations being rejected the Appellant submitted a claim for asylum on 31 May 2017. The basis of his claim was that his political activity in Bangladesh as a member of Jamaat E Islam would cause him to face persecution on return to Bangladesh.
5. The Secretary of State refused the Appellant's claim not accepting that he was a member of Jamaat E Islam and therefore that he had faced persecution in the past or would face persecution on return. The Judge dismissed his appeal finding the Appellant not to be a credible witness on the majority of the issues raised but concluding that the Appellant "may have been a member of the JEI but he had not demonstrated political activities of such a level as to make him a target on the basis of those activities."

Submissions

6. At the hearing before me Mr Islam appeared for the Appellant and Mr Tarlow for the Respondent.

7. For the Appellant Mr Islam said that there were two issues. Firstly, the finding at paragraph 26 of the decision that the Appellant accepted that he had returned to Bangladesh on his own passport in 2009 and had not been stopped at the airport and had no problems returning to the United Kingdom. There was no such evidence, this is a mistake of fact which infects the credibility finding. Secondly the Judge appears to find that the Appellant was a member of Jamaat E Islam but does not go on to assess risk on this basis. The objective evidence shows that Jamaat E Islam is a proscribed organisation whose members are subject to adverse attention from the authorities.
8. For the Respondent Mr Tarlow accepted that there was an error of fact and that there was no assessment of the risk to the Appellant as a member of Jamaat E Islam.
9. I gave an extempore decision allowing the appeal and remitting the matter to the First-tier Tribunal for rehearing with no findings preserved.

Decision

10. It is clear and accepted that the Judge made an error of fact in paragraph 26 of the decision when the Judge suggested that the Appellant had accepted that he had returned to Bangladesh on his own passport in 2009 and had not been stopped at the airport and had no problems returning to the UK. That is an error of fact which may well have infected the Judge's overall credibility findings but in any event, it is my judgment the Judge's overall credibility findings are unclear and to that extent they are unsafe.
11. The Judge does not make a specific finding as to whether or not the Appellant was a member of Jamaat E Islam. The judge says that he may have been a member but suggests that even if he was he has not demonstrated political activities of such a level as to make him a target on the basis of those activities. The problem with that is the Judge has not made a specific finding on membership, has not said at what level the Appellant may have been a member and has not examined whether or not any activities with Jamaat E Islam may cause the Appellant to be in danger. The Judge has not assessed whether membership of Jamaat E Islam at any level may lead to adverse interest. The absence of findings is in my judgement an error of law.
12. For these reasons I find the decision of the First-tier Tribunal Judge unsafe. It may or may not be that the Article 8 decision is also unsafe but in any event, as this matter is going to be remitted to the First-tier Tribunal, the Appellant will be able to give further evidence as to the state of his marriage and if necessary the possibility of his spouse travelling to Bangladesh to join him if his protection claim appeal is unsuccessful.

Summary of decision

13. Appeal allowed. The decision of the First-tier Tribunal is set aside, and the matter is remitted to the First-tier Tribunal for rehearing with no findings preserved.

Signed

Date: 9 October 2018

A handwritten signature in black ink, appearing to read 'J F W Phillips', written in a cursive style.

J F W Phillips
Deputy Judge of the Upper Tribunal