



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

Appeal Number: PA/02019/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 December 2019**

**Decision & Reasons Promulgated  
On 19 December 2019**

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**'HA'  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

*Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. Failure to comply with this direction could lead to contempt of court proceedings.*

**Representation:**

For the appellant: Mr G Dolan, Counsel, instructed by Black Antelope Law  
For the respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. These are the approved record of the decision and written reasons which were given orally at the end of the hearing on 5 December 2019.

### **Introduction**

2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Herlihy (the 'FtT'), promulgated on 28 August 2019, by which she dismissed his appeal against the respondent's refusal of his protection and human rights claims, in a decision dated 22 February 2019. The respondent had refused the appellant's application for leave to remain based on a claim of asylum, or in the alternative, humanitarian protection, which he founded on his membership of the Bangladesh National Party ('BNP'); and his claim that such refusal would breach his rights under articles 2, 3 and 8 of the European Convention on Human Rights ('ECHR').
3. In essence, the appellant's claims involved the following issue: a claim that the brother of his former wife, who was a prominent member of the rival Awami League in the district in which the appellant had lived, had persecuted the appellant in Bangladesh, including threatening him. The core points taken against the appellant by the respondent related to the vagueness of his knowledge about the BNP, of which he claimed to be a member; an inconsistency between the dates on his claimed membership card, compared with his claimed dates of membership; his varying accounts of alleged torture and threats which were internally inconsistent; and the inconsistencies in threats received by his brother-in-law. Whilst the respondent considered a medical report, which diagnosed the appellant as suffering PTSD, its assistance in the assessment of the appellant's credibility was very limited. The appellant could seek state protection from his brother-in-law or could relocate internally in Bangladesh. The appellant's claimed medical conditions, specifically Hepatitis B, migraine, heartburn and PTSD, were not of sufficient seriousness to engage articles 3 or 8 of the ECHR.

### **The FtT's decision**

4. The FtT did not accept the appellant as credible, although she accepted that he may have been involved as a low-level member of the BNP. The FtT noted the appellant's failure to claim asylum at the earliest opportunity; the deficiencies in the membership card, including a misspelling of the appellant's name and the inconsistency of the claimed membership dates; the vagueness in the appellant's account of his activities the BNP; and the limited weight which the FtT placed on other evidence from the appellant's supporters. Whilst the FtT considered the medical evidence, she did not attach weight to the expert's conclusions on the cause of the appellant's PTSD, noting that she had found the appellant not to be credible.

### **The grounds of appeal and grant of permission**

5. The appellant lodged grounds of appeal which are essentially that the FtT failed to consider whether the appellant was a vulnerable witness, which might explain inconsistencies in his evidence; and the FtT appeared to reach her conclusion about the appellant's credibility, before addressing that the expert medical evidence and then discounting it. The appellant also asserted that the FtT had misconstrued the appellant's claimed membership of a 'particular social group' in relation to his activities with the BNP.
6. First-tier Tribunal Judge Osborne initially refused permission to appeal to this Tribunal on 18 October 2019, but on renewal, permission was granted by Upper Tribunal Judge Blundell on 30 October 2019. He regarded it as arguable that the FtT fell into the error identified in Mibanga v SSHD [2005] EWCA Civ 367, in making an assessment of credibility, and consequently discounting the medical report; and in arguably failing to treat the appellant as a vulnerable witness. Whilst he did not limit the grant of permission on its scope, Judge Blundell did not understand the reference in the ground to a particular social group membership, as the appeal was a case of actual or imputed political opinion.

### **The hearing before me**

#### **Concession and conclusions**

7. The representative's submissions were brief, but Mr Dolan reiterated the points in relation to the failure to consider a vulnerable witness and the 'Mibanga' error.
8. Mr Walker expressly conceded before this Tribunal that the FtT had erred in law in two respects, so that the FtT's decision should be set aside: the first error of law was a failure by the FtT to consider that the appellant was a vulnerable witness within the context of the relevant presidential guidance. As a consequence, the First-tier Tribunal had failed to consider the impact that this might have on the appellant's credibility. The second error of law conceded by Mr Walker was the 'Mibanga' error: in making an assessment on the appellant's credibility and then going on to consider the medical evidence. Specifically, at [42] of the FtT's decision, she states:
 

*"I accept the diagnosis of the appellant's mental health condition but I do not attach weight to the doctor's conclusions as to the cause of the appellant's conditions as being traumatic experiences suffered in Bangladesh at the hands of his brother-in-law as I have not found the appellant's claim credible."*
9. On a final point, Mr Dolan did not understand, nor did I, the ground relating to asserted membership of a particular social group, which he believed to be in error and did not pursue.

10. The representatives agreed that as the errors went to the core issue, namely the appellant's credibility, that none of the findings could stand, and that it was necessary for the remaking of the appeal to done in its entirety by the First-tier Tribunal.

**Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside.**

**I remit this appeal to the First-tier Tribunal for a complete rehearing.**

**Directions to the First-tier Tribunal**

**This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.**

**The remitted appeal shall not be heard by First-tier Tribunal Judges Herlihy or Osborne.**

**The anonymity directions continue to apply.**

Signed **J. Keith**

Date: 16 December 2019

Upper Tribunal Judge Keith