



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

Appeal Number: PA/07128/2017

THE IMMIGRATION ACTS

Heard at Field House

On 24th January 2018

**Decision & Reasons
Promulgated**

On 6th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**SU
(ANONYMITY DIRECTION CONTINUED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Ms S Cunha of the Specialist Appeals Team

**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 their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

The Appellant

1. The Appellant is a Bangladeshi born on 28 August 1993. In late 2006 or early 2007 he entered the United Kingdom as a child accompanying his parents and two younger siblings with leave as a visitor. He states his parents and his sister returned to Bangladesh leaving him and his younger brother in the United Kingdom.
2. On 30 October 2016 he was encountered by the authorities in the course of an immigration investigation at the Balti Hut in Hastings when he proffered identity documents relating to his younger brother who had been granted leave in March 2016.
3. The next day, 1 November 2016, he made a claim for leave on the basis of his human rights. On 29 November 2016 the SSHD refused the application. There is no indication in the Tribunal far that the Appellant appealed that decision.
4. On 18 January 2017 the Appellant made an application for subsidiary protection based on his fear of persecution on return to Bangladesh because his father is or was a politician involved with the Jamaat-e-Islami party and chairman of the union in Sylhet. In 2005 the family home had been torched by Awami League supporters and the Appellant had suffered burn injuries. He stated the authorities were of no assistance, notwithstanding that in 2005 the Bangladeshi Nationalist Party (BNP) was in power in coalition with other parties including Jamaat-e-Islami. The Appellant also claimed involvement with the BNP.

The Home Office Decision

5. By a decision of 14 July 2017 SSHD refused the Appellant's protection claim. The Appellant's scars attributable to being burnt were noted but the SSHD did not accept his account of his family home being torched by Awami League supporters in 2005. Similarly, his claimed involvement in the BNP was not accepted because he appeared to know very little about any BNP activities in which he claimed to have been involved. The SSHD also referred the delay of the Appellant in making his subsidiary protection claim which damaged his credibility pursuant to s.8(6) Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

Proceedings in the First-tier Tribunal

6. By a decision promulgated on 6 November 2018, Judge of the First-tier Tribunal Traynor, finding the Appellant's account not credible, dismissed his appeal. On 6 December 2018, Judge of the First-tier Tribunal Andrew granted the Appellant permission to appeal on the ground that it was arguable the Judge had erred in law by failing to take proper account of the medical evidence before him and by failing to address the Appellant's claim based on his private and family life with his cousins living in the United Kingdom.

The Hearing in the Upper Tribunal

7. The Appellant attended. He had no representation although he had been represented at the First-tier Tribunal hearing. He confirmed his address. I explained the purpose and procedure to be adopted at an error of law hearing. Since the Appellant was unrepresented, Ms Cunha made her submissions first.

Submissions for the SSHD

8. Ms Cunha referred to paragraphs 10 and 11 of the grounds for appeal which appear to indicate the Appellant had legal advice in their preparation. These two paragraphs are the only grounds which refer to specific parts of the Judge's decision. Paragraph 10 asserts the Judge failed to address the contents of the Rule 35 report which had been prepared when the Appellant was in detention.
9. Paragraph 11 asserts the Judge gave inadequate consideration or reasoning to reject the Appellant's claim based on his family life with his relatives in the United Kingdom
10. The Judge had referred to the Rule 35 report at paragraph 8(iii) of his decision and at paragraph 26 the SSHD's rejection of the Appellant's claim that the injuries were the consequence of the Appellant's family home being torched in 2005. The Rule 35 report was evidence of the existence of scarring but not of its causation.
11. At paragraph 40 the Judge found that the injuries may well have been caused in a fire but he did not accept the Appellant's claim about the circumstances of the fire. Ms Cunha noted the Appellant had claimed that between 10 and 20 Awami League supporters had torched his family home but at paragraph 14 of his decision the Judge had noted the Appellant stated he had learned that his father's home had been attacked by members of the opposition party from a cousin and further that he knew nothing of his father's political activity until March 2017 when a cousin told him.
12. The Judge at paragraph 40 gave adequate reasons not to accept that any apparent inconsistencies in the Appellant's evidence about this far were attributable to a poor memory. The grounds for appeal have not challenged the Judge's adverse credibility finding, particularly at paragraph 36 of the decision.
13. At paragraphs 37 and 38 the Judge had given reasons for concluding that the Appellant's primary concern for remaining (or having been left by his parents) in the United Kingdom was for reasons of education and economic betterment. He had delayed seeking to regularise his immigration status until he had been encountered by immigration officials in the course of an investigation. He had proffered a false identity, that of his younger brother, and then made a human rights claim before making a subsidiary protection claim after rejection of the human rights claim.
14. At paragraph 46 of his decision the Judge had given sustainable reasons for rejecting the subsidiary protection claim based on political opinion. The Appellant's father had died in 2014 and the Appellant had not discharged

the burden of proof to show that he would be at risk on return to Bangladesh.

15. The Judge had made an adequate and proper consideration of the private and family life claim at paragraph 53 of his decision which needed to be viewed in the light of the Appellant's claim which the Judge had set out at paragraphs 18-22 of his decision.
16. The Judge at paragraph 53 had considered all the relevant issues even if he had not referred to the relevant case law or statutory provisions. The decision was safe and the appeal should be dismissed.

Response by the Appellant

17. I summarised the import of the submissions for the SSHD. Ms Cunha agreed it was a fair summary and the Appellant did not ask for any clarification.
18. He reminded me that he was aged about 12 in 2005. All his relatives were in the United Kingdom and that explained why he was not able to obtain medical evidence from Bangladesh. He re-asserted that his scars were the result of injuries from the 2005 fire. He had been taken to hospital after the fire and while in detention in the United Kingdom he had been examined for the purpose of the preparation of a Rule 35 report. He sought to explain the apparent inconsistency identified at paragraph 14 of the Judge's decision by stating that he knew that he had been attacked but had only found out by whom and why he had been attacked when told in 2017 by his cousin.
19. While in detention in the United Kingdom he had not felt safe, previously he had never lived alone. While in detention he had suffered badly on account of his wisdom teeth and had sought medical assistance.
20. On return to Bangladesh he could easily be traced through Facebook because his father had been well-known and had enemies.
21. On arrival in 2006/7 he had been about 13. Thereafter, he had lived with his aunt who had suffered a stroke in 2010 whereupon he went to live with Nadir Begum whom the Judge found is married to the Appellant's first cousin. She provided everything for him and he had a good relationship with her children. He has lived in the United Kingdom some 13 years and all his family are either here or in the United States. Since he came here the general position in Bangladesh was worse than ever. He had no assets in Bangladesh. Awami League supporters had burned his family home in 2005 during which they had attacked his grandmother who had died the following year. He had no family in Bangladesh.
22. Ms Cunha for the SSHD had nothing further to add to her previous submissions.

Findings and Consideration

23. The Rule 35 report concludes that the Appellant's scars are consistent with torture or assault and notes that some of them the Appellant

contributes to burns. The Rule 35 report is not a Medicare-legal report but is prepared primarily in the context of matters referred to in the SSHD's letter to the Appellant releasing him from detention which states his detention has been reviewed and the Rule 35 report carefully considered when determining his suitability for detention under the "Adult at Risk" policy. There was no other medical evidence before the Judge. He knew of the Rule 35 report. At paragraphs 14 and 26 he dealt with the Appellant's evidence about the claimed 2005 attack and why the SSHD did not believe him and gave sustainable reasons for his adverse finding on the claimed attack at paragraphs 39 and 40 of his decision.

24. The adverse credibility finding on the 2005 attack together with the conclusions for which sustainable reasons were given at paragraphs 37 and 38 are sufficient to explain to the Appellant why the Judge did not find his political asylum claim to have been substantiated, even to the lower standard of proof.
25. At paragraphs 18-22 the Judge set out the evidence of the Appellant's private and family life. He was entitled to note the lack of any evidence to support the Appellant from his younger brother and the lack of any explanation for this. At paragraphs 43 and 44 he made findings about the Appellant's private and family life in the United Kingdom. At paragraph 53 he referred expressly to the relationship between the Appellant and his family expressly noting that he lived with his aunt and her family. This fed into his assessment in the same and following paragraph of the proportionality of the SSHD's decision to reject the Appellant's claim based on his private and family life.
26. The Judge gave ample and sustainable reasons for his conclusions and I do not find his treatment of the claim discloses any material error of law. The appeal is therefore dismissed because the decision of the First-tier Tribunal contains no material error of law.

Anonymity

27. No submissions were made about the anonymity direction made by the Judge and in the circumstances, I direct that it should continue.

SUMMARY OF DECISION

The decision of the First-tier Tribunal did not contain a material error of law and it shall stand. The consequence is the Appellant's appeal is dismissed.

Anonymity direction continued.

Signed/Official Crest
2019

Date 29. i.

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal