



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

Appeal Number: PA/08781/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC

On 8th March 2019

Decision & Reasons

Promulgated

On 21st March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR RUMIN MIA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer (Counsel)

For the Respondent: Mr A McVeety (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge J Austin, promulgated on 4th September 2018, following a hearing at Manchester on 23rd August 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.
2. The Appellant is a male, a citizen of Bangladesh, and was born on 1st March 1977. He appealed against the decision of the Respondent dated

1st July 2018, refusing his application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The basis of the Appellant's claim is that he came to the UK in 2011, in order to avoid creditors for gambling debts and a loan that he had taken. He was under threat of death from the creditors. He arrived in the UK with no intention of returning to Bangladesh. This is because he feared being killed there. He was unable to pay his gambling debts. The Appellant was encountered by immigration officials and arrested by the police for working illegally at the Shaithi Takeaway on 22nd March 2018.

The Judge's Findings

4. The judge considered the Respondent's refusal letter, to the effect that the Appellant had offered different accounts of his problems in his two interviews, which damaged his credibility. He had also given different names of his two creditors. He claimed he was physically attacked by creditors but did not mention being assaulted. He stated he used the last of his money to leave his home country to escape his creditors.
5. He was then discovered working illegally in the UK as a chef. He failed to explain why he was not using his earnings to settle his debts in Bangladesh by sending money home.
6. The judge also considered the Appellant's account, which was that he had been given a straightforward and consistent account throughout the proceedings. He had a gambling problem. He had built up insurmountable debts. The delay in claiming asylum was because he feared the outcome of any claim that he might make. If he had been returned back to Bangladesh.
7. The judge found that the Appellant had not discharged the burden of proof that was upon him. He had not set out to repay his debts. He had given an inconsistent account. The judge was not satisfied that the Appellant would suffer treatment in Bangladesh which would breach his Articles 2 and 3 human rights.
8. The appeal was dismissed.

Grounds of Application

9. The grounds of application state that the judge proceeded under a mistake of fact, took into account matters that were not put to the Appellant at the hearing, and failed to give adequate reasons.
10. On 10th December 2018 permission to appeal was granted by the Tribunal.

Submissions

11. At the hearing before me on 8th March 2019, Mr Greer, appearing on behalf of the Appellant, made his submissions with his usual commendable brevity. He elaborated upon what was stated in the grounds of application. There were three essential grounds. First, the mistake as to fact. This arose under the mistaken assumption that the Appellant had provided different names of creditors and different types. When the reality was that they were the same people, whose name given during the screening interview was phonetically similar to the names subsequently given in the main interview. Mr Greer submitted that I should look at the Secretary of State's bundle (at B6 and at question 4.1 there). I should compare this with what was said in the substantive interview (at question 20 at page 37). I should also look at the Appellant's bundle (at pages 27 to 28). It would be clear that there are no stark differences in the names that are given. The names are the same.
12. Second, there was the issue of "procedural impropriety" and this arose from the fact that, the issues, in relation to why the Appellant had not paid off his debts, if he was fearful of return to Bangladesh on account of ill-treatment that he would face from his creditors, was never put to him. It was not put to him during his interview. It was not put to him at the hearing either. Therefore, the Appellant was not given the chance to deal with this critical basis of refusal that the judge eventually adopted.
13. Third, there was the question of the failure to provide "adequate reasons". This too, submitted Mr Greer, was important (if one looks at paragraphs 27 to 28 of the judge's decision) because if the judge did not consider the fact that the names were phonetically different but otherwise the same; and if the judge did not consider that the issues that troubled the Tribunal, such as why the Appellant was not paying off his debts, had not been put to the Appellant, then the reasons for refusal were inadequate.
14. For his part, Mr McVeety submitted that this challenge was nothing more than a disagreement with the judge's findings. If one looks at the Appellant's witness (which is barely more than two pages long) the Appellant deals with none of the issues that he currently complains about (see pages 27 to 29), notwithstanding the fact, that the issues have all been flagged up in the refusal letter. He simply says that he borrowed money and he now owed it. It was for the Appellant to provide the basis for his claim in the witness statement, once the decision had been made in the refusal letter to reject his asylum and protection claim.

15. Second, it cannot be procedurally unfair if the very issues that had been flagged up in the refusal letter, are not then addressed by the Appellant himself in his witness statement. It is in fact, open to the judge to infer whatever he may from the Appellant's failure to deal with the issues in his witness statement.
16. Finally, the Secretary of State relied upon the refusal letter (especially paragraph 33), where the Secretary of State states that, "it is unclear why you didn't use these monies to pay off your debts". If the Appellant did not give an explanation at the hearing after that, this was entirely to be laid at the Appellant's door. The Tribunal could not be criticised for this.

No Error of Law

17. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
18. First, there is the issue of the Appellant having given a confusing account of the debts that he owed to his creditors. It has been said that the Appellant had given the names of the same two creditors but they were phonetically different sounding. That may or may well not be the case. What is clear, however, is that in the refusal letter (at paragraph 27), the Appellant is shown as having given the names of his creditors as "Faslu Rahman Faslu" and "Abdul Masabay" (AIR Q20-21). In his screening interview, the names that the Appellant gives are "A Rahman Fajlu" and "Abdul Musabbir" (SCR Q.4.1). On this basis, it was open to the judge to conclude that the first creditor mentioned here was not phonetically different but was a different person altogether. In his asylum interview, the Appellant refers to "Faslu" but in his screening interview the Appellant refers to "Fajlu". Even if one makes an allowance for the difference of one letter in this name, the full name is still not the same as recited by the Appellant in these two interviews.
19. Second, the judge does give adequate reasons for the decision. These reasons amount to at least four in paragraphs 27 to 28. First, the judge states that the Appellant has not made an attempt to repay his debts from his earnings in the UK even though he admits he has been employed as a chef in a restaurant (paragraph 27). This was a matter that was already referred to in the refusal letter. Second, the judge observes that the Appellant has close family members who could support him and assist him in clearing his debt. Third, the judge states that the Appellant has given different names for his creditors at different times, and this cannot be a mistake of fact, given what I have stated above already. Fourth, the judge concludes that it would be reasonable to have expected the Appellant to have done something more to remove the threat by repaying some or all of the debt either by himself or by the assistance of his family (paragraph

28). Finally, the judge is particularly entitled to come to this conclusion because of his observation that this conclusion that he arrives at is emphasised by the fact that the Appellant states that his family in the UK “will provide in financial assistance to the Appellant’s own family who remain in Bangladesh, so it shows that there were means to remove the claimed threat of the unpaid debts” (paragraph 28).

20. I should add, that no one in the hearing below, considered the issue as to whether the Refugee Convention was engaged in the first place given that this was a dispute between two private parties, where the State, (had the state been required to come to the Appellant’s assistance), could have provided him with necessary remedies, if he was threatened to be beaten up or injured or killed. It is a matter that I need say no more about because it does not form the basis of the decision below. All I need say is that the judge was perfectly entitled to come to the conclusions that he did and there is no error of law in this decision.

Decision

The decision of the judge does not involve the making of an error of law. The decision shall stand.

No anonymity direction is made.

This appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

20th March 2019