Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09602/2017

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 14 December 2018	**On 8 February 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

MR
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Murphy instructed by J Stifford, Solicitors
For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Bangladesh who was born on 10 October 1988. He first arrived in the United Kingdom on 17 September 2009 as a Tier 4 student. That leave was subsequently extended until 27 July 2014. In December 2013, he left the UK to return to Bangladesh before returning to the UK on 26 January 2014. Thereafter, he applied for leave to remain which was refused on 26 September 2014 with no right of appeal. On 5 August 2016, the appellant was served with notice (RED.0001) that he was subject to administrative removal as an overstayer.

3. On 2 February 2017, the appellant claimed asylum. On 15 September 2017, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds.

4. The appellant appealed to the First-tier Tribunal. Following a hearing on 22 October 2017, in a determination promulgated on 30 October 2017 Judge Suffield-Thompson dismissed the appellant's appeal on all grounds.

5. The appellant sought permission to appeal to the Upper Tribunal. That was initially refused by the First-tier Tribunal but on 30 May 2018 the Upper Tribunal (UTJ Bruce) granted the appellant permission to appeal.

6. On 1 August 2018, the Secretary of State filed a rule 24 notice seeking to upheld Judge Suffield-Thompson's decision.

The Judge's Decision

7. The appellant's claim for asylum was based upon his, and his family's, political involvement in Bangladesh. He claimed that he and his family had been involved in anti-government politics. In particular, he claimed that during the local elections in 2016, his family assisted his father's friend who was an opposition candidate. His family were threatened and forced to leave their home. His uncle ("SM") was targeted, shot and died in hospital. Before the judge, the appellant claimed (relying upon documents provided at the hearing) that a false charge had been made against him in Bangladesh by political opponents and that he was subject to a First Information Report and arrest warrant. He feared that if he returned to Bangladesh he would be killed.

8. Before Judge Suffield-Thompson, the respondent was not represented by a Presenting Officer. Nevertheless, no application for an adjournment was made and the judge dealt with the case without a Home Office representative. The appellant was represented by Counsel and, in addition to relying upon documentary and other written evidence, the appellant gave oral evidence as did his uncle.

9. In dismissing the appellant's appeal, the judge made an adverse credibility finding and did not accept the truth of the appellant's claim or evidence.

10. First, at para 27 the judge noted that the appellant had only claimed asylum after he had been served with notice of removal as an overstayer and that she took "great note of the timing of this claim". That reflects the judge's reference to s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 at para 24 of her determination which she said she bore "firmly in mind".

11. Secondly, the judge identified a number of inconsistencies in the appellant's evidence which undermined his credibility. These are set out at paras 28–35 of her determination as follows:

> "28. The Appellant has not been consistent in his evidence both written and oral either during the hearing or in his SI and AI. I will set out the conflicts in his evidence below.
>
> 29. In his AI the Appellant (AI. Q6) stated that his parents had to leave their home and moved to a safe place in March 2016. In his first witness statement (paragraph 2) he said his parents had helped at the election in "Summer last year" and then as a consequence had to move. So, there is an inconsistency with the date. I find that any event as traumatic as his family having to leave their life-long family home to be at a date the Appellant would be certain to remember.
>
> 30. In his AI (Q.62) the Appellant said that the summer in Bangladesh is March until May and the rainy season starts in June. This is not consistent with the information gathered by the Respondent. The Respondent states that on a website (http://rundownroute.com/index.php/runs/asia/item/) the six seasons of Bangladesh summer begins in mid April. I find that the Appellant was not honest in his answer in his AI.
>
> 31. In the AI the Appellant appears to be speaking of his "uncle", the man named [SK] and later says he is a friend of his father. I do not find this to be a deliberate untruth as the Tribunal is aware from other Bangladeshi appeals that as a matter of respect people are often referred to as aunt or uncle when they are older friends of the Appellant's parents. He clarified this as soon as he was asked to do so (AI, Q 23).
>
> 32. I now turn to the newspapers that the Appellant has submitted and that his counsel submits I should place great reliance upon. In his AI he was asked the date of the 2016 election and he said March 2016 (AI, Q19) but in the newspapers, he has submitted (with translations) one paper "The Daily Shurbana" says it was 31 March but the "Bangladeshi Pratidin" states it was 16 April.
>
> 33. The Appellant was asked in his AI why he could not go back home and he said (AI, Q53) that he had no safe place to say and yet he had laready (*sic*) told the officer at the start of the interview that his parents were now living in a safe place (AI, Q6).
>
> 34. Although the appellant has told the Home Office interviewing Officer and the Tribunal that his family had been threatened and he would be killed (AI, Q56) he was unable to say when and how this threat had taken place.

35. The Appellant has said that the opposition wanted to kill his parents but before they were attacked by the opposition they fled but he was unable to say when this happened. Again I do not find it credible that the Appellant would not know when this threat took place especially as it prompted, he says, his parents to leave their family home."

12. Thirdly, at paras 36–40 the judge dealt with a number of documents that were relied upon by the appellant, including a death certificate said to relate to his uncle, letters of support including one said to be from the Bangladesh Nationalist Party ("BNP") and a court warrant and charge sheet. The judge said this:

"36. The Appellant has stated that his uncle was killed due to his activities. I have a death certificate before me. Firstly, there is nothing before me to show that they are indeed blood relatives, there is nothing on the death certificate to say how he died and I note that there is no date of birth on this document of the deceased. I give it little weight in this appeal.

37. I now turn to the overall issue of the accuracy of the documents submitted by the Appellant. He has sent in newspaper articles, letters of support from family and a charge sheet and arrest warrant. In her skeleton argument Miss. Geherman relies upon the case of **PJ v SSHD [2014] EWCA Civ 1011** in which the court stated that if there is a process of enquiry which will conclusively resolve the authenticity or reliability of a document and it is easy to carry out then the Respondent should undertake those checks.

38. However, the fact that they did not do so does not then mean I have to accept these documents as being of great evidential weight in the appeal. The dates of the elections in the papers are different which leads me to question their accuracy. In relation to the first information sheet, the arrest warrant and the charge sheet (Appellant's bundle, pages 18-26) and the letter from the lawyer (Appellant's bundle, page 15) I accept that I did not have the originals before me but the copy of the letter from the lawyer was one that could easily have been created by anyone. The reference number at the top was missing and the fact that it was dated 12 October 2017, just before the hearing leads me to give it little weight. I also had a copy of a letter purporting to come from the Bangladesh Nationalist Party (Appellant's bundle, page 14). Again (through no fault of the Appellant) I did not see the original but the date of 12/10/17 is only some two weeks ago and states that his father was a member of the BNP and that this Appellant had to leave due to the family political activities. Again, this is an easy letter to create and I give it little weight in the light of the Appellant's overall inconsistent evidence and my finding that he is not a credible witness.

39. The Appellant provided some letters he states were from family and friend to support his story of his parent's involvement in politics but again, for the same reason I give these little weight.

> 40. I also note that I had no independent evidence before me as to what a court warrant or charge sheet from Bangladesh would look like so had nothing before me but the word of the Appellant. The burden of proof in this case lies with the Appellant, to the lower standard, and I find that this Appellant has not satisfied me to the lower standard that he has a well-founded fear of persecution as I do not accept that he or his family have been involved in any political activities."

13. Given the judge's adverse credibility finding, she inevitably dismissed his appeal based upon risk on return to Bangladesh and (at para 43) she noted that the appellant had not relied upon Art 8.

The Grounds

14. The appellant's renewed grounds dated 24 January 2018 are threefold.

15. Ground 1 contends that the judge was wrong to give "little weight" to the documentary evidence as the respondent had taken no steps to verify the documents nor, given the absence of a Presenting Officer at the hearing, were they challenged before the judge.

16. Ground 2 argues that the judge failed to take into account the appellant's explanation why he had delayed in claiming asylum set out in his witness statement.

17. Ground 3 contend that the judge failed to take into account the appellant's explanation when relying upon inconsistencies in his evidence. It is said that the judge "simply rehearses the Respondent's initial findings in the Reasons for Refusal Letter". Further, it is contended that the judge attached undue "prominence and weight" to a number of matters in the evidence. First, to the apparent inconsistency in the appellant stating that the events occurred in "March 2016" which was also the "summer last year" when the objective evidence showed that the summer in Bangladesh began in mid-April. Secondly, it was a "strained and artificial inconsistency", when looking at the appellant's evidence, to juxtapose his evidence that he had no safe place to return when he also said his parents had moved to a safe place. The evidence was that his parents had left to a place of safety and continued to move around to remain safe. Thirdly, contrary to what the judge stated in paras 34 and 35, the appellant had given evidence in his interview of when his parents were threatened and his uncle attacked and killed and also how the former had happened.

18. In his oral submissions, Mr Murphy expanded upon ground 3 and was content to rely upon grounds 1 and 2 without wishing to add anything further.

19. In addition, he sought permission to rely upon a further ground in relation to the judge's reasoning in para 38. There, he submitted, the judge had wrongly failed to take into account the documents relied upon by the appellant in assessing his credibility, by giving them "little weight"

because she had already concluded that the appellant was not a credible witness. Mr Murphy relied upon the IAT decision in MT (credibility assessment flawed – *Virjon B* applied) Syria [2004] UKIAT 00307 at [6] where the IAT applied what was said in the High Court decision of R v Special Adjudicator, ex parte Virjon B [2002] EWHC 1469 (Admin) at [19]–[23] where a judge was found to fall into legal error where he stated: "I therefore attach little weight to the reports bearing in mind that I have found both the appellant and his wife to be without credibility".

20. Ms Aboni did not object to the addition of this ground of appeal, which I grant permission to the appellant to raise, and I heard oral submissions upon it.

Discussion

21. Before the judge, the entirety of the appellant's case turned upon his credibility. In the decision letter, the respondent had not accepted that the appellant's account was truthful. Although the respondent was not represented at the hearing before the judge, the reasons for refusal represented the respondent's position, at least upon the evidence which had previously been submitted. The appellant (and his Counsel) was not taken by surprise in that regard. Indeed, it is part of the appellant's case in the Upper Tribunal that he had, in his written statement, dealt with a number of matters raised in the decision letter which the judge failed to take into account.

22. The appellant did, however, rely upon further evidence, in particular a letter from the BNP. The judge was not required to accept the reliability and truth of its contents simply because a Presenting Officer was not present to challenge it. Subject to the requirements of fairness, the judge was entitled to consider whether that documentation was reliable. Of course, in the absence of a Presenting Officer – both in relation to this evidence and the oral evidence given at the hearing – the judge was somewhat constrained in assessing that evidence. It was important that she did not descend "into the arena" but that did not prevent her, subject to giving the appellant's Counsel a fair opportunity to deal with any issues, raising issues posed by that evidence in assessing its reliability.

23. I set that background out not because it is claimed that the judge unfairly approached the evidence but simply to identify the constraints under which the judge was functioning in the absence of a Presenting Officer. That is, in my judgment, exemplified by the judge's adoption of a number of reasons given in the decision letter for disbelieving the appellants and to which I shall return shortly.

24. Before doing so, I begin with grounds 1 and 2. Neither was developed by Mr Murphy in his oral submissions before me. Neither ground is, in my judgment, sustainable.

25. As regards ground 1, I reject the contention that the judge was required to accept the authenticity and reliability of the documents relied upon by the appellant because the respondent had not sought to verify them. Whilst there *may* be an obligation placed upon the respondent to make enquiries in order to verify documents, particularly where that can be undertaken simply and effectively (see PJ v SSHD [2014] EWCA Civ 1011 as clarified in MA (Bangladesh) v SSHD [2016] EWCA Civ 175 at [29]-[30]), there is "no general duty of enquiry…to authenticate documents produced in support of a protection claim" (see VT Sri Lanka [2017] UKUT 00368) (IAC)). In the leading Strasbourg case of Singh and Others v Belgium [2011] ECHR 33210/11, the relevant documents emanated from the UNHCR and enquiry as to their authenticity was undoubtedly "straight-forward" and from "an unimpeachable source" (see VT at [16] and MT Afghanistan [2013] UKUT 253 (IAC)). In particular, of course, an enquiry did not create any risk to the individual concerned. By contrast, in this appeal, the documents emanated from the authorities in Bangladesh (the ruling party of which the appellant claimed to fear persecution) and I do not accept that authentication would be "straight-forward" and required. Consequently, I reject ground 1.

26. As regards ground 2, the fact of the matter is that the appellant did not claim asylum until after he had been served notice of administrative removal as an overstayer. That notice was served on 5 August 2016 and he did not claim asylum until almost six months later on 2 February 2017. Importantly, however, his asylum claim was principally based upon events that occurred in March 2016. There was, therefore, a relevant delay which, by virtue of s.8 of the 2004 Act, was potentially damaging of his credibility. The appellant's explanation at para 4(i) of his witness statement states that "the question of safety of my life in my country did not arise" but that is plainly not the case after March 2016. His further comment that he "always wanted to go back to my country" does not, in my judgment, offer a reasonable explanation why he did not claim asylum in the UK sooner but only chose to do so after he was served with notice of removal as an overstayer. I do not accept that the judge gave "disproportionate weight" to this factor in assessing the appellant's credibility. She was entitled to take it into account, indeed she was required to take it into account under s.8 of the 2004 Act, and I see nothing in the totality of her reason at paras 23–40 which established that she gave improper weight to this factor. For those reasons, therefore, I reject ground 2 also.

27. Ground 3 has, however, more merit.

28. First, and this was a matter which particularly concerned UTJ Bruce in granting permission, the judge placed improper weight upon an alleged inconsistency in the appellant's evidence concerning when the alleged events in Bangladesh occurred. His evidence was that they occurred in March 2016, in particular on 31 March 2016. He referred to this time also as being the "summer last year". Relying upon a website, also relied upon by the respondent in the decision letter, the judge concluded that his

evidence is inconsistent with the statement on the website that summer in Bangladesh begins in "mid-April". To regard the appellant's statement that, in effect, March 2016 was in the "summer" when it 'officially' began only in mid-April as significant or indeed an inconsistency at all, envisages the appellant having an unwarranted degree of precision in the dates of the seasons in Bangladesh and also places an unwarranted certainty in the precision of the information obtained from the website. In my judgment, any differences in the evidence cannot rationally support a reason for disbelieving the appellant's account.

29. Secondly, I accept Mr Murphy's submissions that the judge's reasoning in paras 33 – 35 is also unsustainable. Paragraph 33 fails properly to grapple with the appellant's evidence that his parents had left their home area to seek safety but were "constantly on the run and being threatened" (see para 4(e) of his witness statement). Likewise, although his evidence at his asylum interview was punctuated by interruptions, it is clear from his answers at questions 56, 57, 58 and 59 that he did specify when the threats and attacks upon her parents occurred and also (in particular question 58) he gave some detail as to how their house had been broken into by individuals carrying weapons. I accept that the judge, at paras 33 – 35, has failed to fully grapple with or appreciate the appellant's evidence at interview. Her reasons are inadequate to sustain, in part or at all, her adverse credibility finding.

30. As regards the additional grounds relied upon before me, it is not necessary to resolve whether, in fact, the judge fell into the error recognised in Vijon B and with which the Court of Appeal subsequently agreed in Mibanga v SSHD [2005] EWCA Civ 367. There is certainly a very strong suggestion the judge considered the documents (not here medical reports as in the other cases) simply as a 'add on' having already determined that the appellant was not credible. I would be inclined to the view that she did. However, in giving the documentary evidence "little weight", the judge compounds any error in that regard by taking into account "the appellant's overall inconsistent evidence" which, as I have already concluded, she was not properly entitled to do. That, therefore, infected her assessment of the documentary evidence in para 38.

31. Whilst some of the judge's reasons for reaching her adverse credibility finding remain unchallenged, the errors I have identified above are, in my judgment, material to her reaching that adverse credibility finding. I am unpersuaded that she would necessarily have reached the same decision had the errors not occurred.

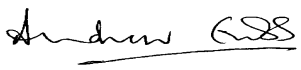
32. For these reasons, the judge materially erred in law in reaching her adverse credibility finding and in dismissing the appellant's international protection claim.

Decision

33. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.

34. Having regard to the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President Practice Statement, the appropriate disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Suffield-Thompson.

Signed



A Grubb
Judge of the Upper Tribunal

16 January 2019