



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBER: PA/12018/2017

THE IMMIGRATION ACTS

Heard at: Field House
On: 26 February 2019

Decision and Reasons Promulgated
On: 05 March 2019

Before

Deputy Upper Tribunal Judge Mailer

Between

ABDUL [A]

ANONYMITY DIRECTION NOT MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr S Tauhid, Huber's Law Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Bangladesh, born on 26 October 1977. He appeals with permission against the decision of the First-tier Tribunal promulgated on 29 June 2018, dismissing his appeal against the respondent's decision to refuse his protection and human rights claims.
2. It is contended in the grounds of appeal that the First-tier Judge "has totally misconstrued and misinterpreted the FIR ... filed and relied upon by the appellant [32]. It is also contended that "... the Judge has miserably failed to understand"

various matters. It was wholly unnecessary for counsel who settled the grounds to make such a gratuitous assertion.

3. The appeal came before the Upper Tribunal on 27 September 2018. An application was made on that day pursuant to Rule 15(2A) of the 2008 Rules to file and produce documents from Bangladesh which were not yet available. There was no objection to that application and the appeal was adjourned until 4 January 2019.
4. It was only at the resumed hearing on 4 January 2019 that a bundle of documents received from Bangladesh was produced. Ms Isherwood, who represented the respondent at that hearing, understandably stated that the respondent needed time to consider the 71 pages produced. There was no objection to her application for an adjournment. The appeal was then adjourned to 26 February 2019.
5. Following the production of those documents, Ms Isherwood has now stated on behalf of the respondent that it is accepted that the First-tier Tribunal Judge erred in the approach to the court documentation produced. She agreed that the decision should accordingly be set aside and remitted to the First-tier Tribunal for a fresh decision to be made.
6. She contended at the hearing on 26 February - as she had stated in her email sent on 11 February 2019 to an Upper Tribunal lawyer - that none of the documents produced addresses or supports the claimed position that the appellant is said to have held, and accordingly the adverse credibility finding on the political positions should stand. Further, putting in medical records at this late stage without amending the grounds did not alter the adverse finding relating to the lack of evidence including the appellant's father's refusal to help.
7. Mr Tauhid disagreed and submitted that in the circumstances there should be a full re-hearing without any preserved findings.

Assessment

8. It is accepted that the Judge erred in her approach to the FIR dated 2 May 2010 relied on by the appellant. In particular, it was contended that the communication between the sub-inspector and the officer in charge of the police station contains material allegations against the appellant depending on which criminal proceedings have been instituted against him. This is not an internal letter but has to be read together with what the Judge referred to as a letter written by one police officer to another. That explains why the formal part of the FIR does not state what the incident is.
9. It is now accepted that the decision is flawed and that in the interests of justice the appeal should be remitted to the First-tier Tribunal to be re-made.
10. I have had regard to the contentions of both parties as to the scope of the re-hearing. As noted, Ms Isherwood contended that the adverse credibility findings

should stand. On the other hand, Mr Tauhid submitted that there should be a de novo hearing.

11. I am unable to say with any degree of certainty whether the finding of adverse credibility against the appellant may in part have been informed by the misinterpretation and misunderstanding of the documents that were produced.
12. I accept the joint submission that in the circumstances, the extent of judicial fact finding which is necessary for the decision to be re-made is extensive.
13. I remit the appeal for a fresh decision to be made without preserving any findings.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside.

The appeal is remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made by another Judge.

Anonymity direction not made.

Signed

Date 3 March 2019

Deputy Upper Tribunal Judge Mailer