



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/12949/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23 April 2019

Decision & Reasons Promulgated  
On 10 May 2019

Before

UPPER TRIBUNAL JUDGE WARR

Between

AU  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms S Begum (SB Solicitors Limited)

For the Respondent: Mr S Kandola, Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Bangladesh born on 12 October 1987. In the appellant's immigration history the respondent notes that the appellant was granted a visa to the United Kingdom on 17 September 2009 as a Tier 4 Student. He claimed to have arrived in this country on 6 October 2009 by plane and claimed asylum on 4 May 2018. He had left Bangladesh and travelled to the UK on 17 September 2009 by plane. The appellant claimed to be a member of Jamati Aslami.

2. The appellant claimed he had a problem with his cousin following a land dispute. The respondent rejected the appellant's asylum claim on 31 October 2018. The appellant's appeal came before a First-tier Judge on 10 December 2018. In summarising the appellant's claim the judge states as follows in paragraph 11 of his decision

"11. The appellant did not have a good relationship with his cousin and uncle because they supported opposing political parties. The appellant's cousin is a member of the Awami League and the appellant is a member of JI. The appellant's cousin came to this country in 2011 and he was deported in 2016 because he had overstayed. The appellant's cousin believes that the appellant provided information about him to the respondent which resulted in him being deported. The appellant claims however that he did not have any issues with the appellant whilst he was in this country. The appellant's cousin returned to this country and claims that he will kill the appellant."

The judge also heard evidence from the appellant's sister and her son.

3. The judge in finding against the appellant noted the delay in making his claim for asylum. He had come to the UK as a student. His visa had expired in 2010 and he had not made his asylum claim until 2018.
4. The judge went on to reject the appellant's protection claim as follows:

"26. I am of also of the view that the claim by the appellant that his sister on her recent visit to Bangladesh found that threats are being issued against the appellant by his cousin because his cousin is of the view that the appellant was the cause of him being deported from this country. It transpires that the appellant's cousin has managed to find his way back into this country after being deported I do not find this to be credible and that this narrative has been developed to assist the appellant in asylum claim.

27. The appellant claims that he has decided not to travel to Bangladesh after being persuaded by his sister and parents not to travel because of the threats that had been received as not credible for the following reasons. I did not find the appellant to be credible regarding how he obtained the finances to purchase the tickets despite that fact that he is not entitled to work in this country. I do not find it credible that the appellant decided that he would no longer travel because of threats that had been received from his cousin. I also note that the appellant claims that he decided not to travel because his sister was going through a difficult time in her marriage and that her son and his nephew is involved in drugs. I do not find this credible because the evidence is that the appellant's sister remarried in 2014 and is no longer in an abusive relationship.

28. I also do not find it credible that the appellant has attempted on numerous occasions to comply with the immigration laws but that he has been prevented to do so by the respondent. The fact is that the appellant has been in breach of the Rules for a significant period of his time in this country and the blame can only be attached to himself and not the

respondent. The appellant came here as a student and he has not studied or been enrolled on a course since 2010.

29. I am of the view that the appellant has not provided evidence that his cousin has power and influence in the Awami League so as to ensure that the appellant would be persecuted on his return to Bangladesh. I do not find it credible that the appellant does have a cousin who is seeking revenge against him and this is one of the core planks of his claim. The appellant in my view because he has not provided evidence to show a fear of persecution would receive protection from the state.
  30. I do not find it credible that the appellant and cousin have a land dispute and the appellant based on the fact that he has been in this country since 2009 when the dispute would have existed did not take the opportunity to raise this issue with the authorities in this country. I have no evidence before me to suggest that the appellant whilst he was in Bangladesh was pursuing the land issues or that there was indeed a dispute ongoing between the families. The appellant is an educated man and he has not been dependent on the land for the past 20/25 years and hence my doubts in relation to a land dispute or that a cousin has issues with him.
  31. I am also of the view that the appellant has sought to provide evidence that he is linked with the IJ in order to bolster his claim for asylum. The appellant did not provide his member card or receipt of membership which he claims is lost. The appellant claims that he attended meetings in Bangladesh but he could not describe how many demonstrations he attended. The appellant could also not identify/describe the colours of the leaflets which one would have expected him to because this according to him was the main vehicle for the getting out of their information. The appellant claims that he has attended meetings of IJ in this country and that he has formal links with the party. I do not find this credible because the appellant this evidence has been brought forward by the appellant in order to coincide with his asylum claim and it is not in my view plausible. I have also considered the photographs which the appellant has provided and I do not accept that the alleged injuries to the appellant were caused by the actions of the appellant's cousin.
  32. I also did not find the appellant's membership of of IJ and political activities to be credible because he could not recall all of the details of the party and in any event the information that he did recall are readily available on the internet."
5. The judge considered there would be no "very significant obstacles" preventing the appellant's return to Bangladesh where members of his family resided and there were no exceptional circumstances taking the matter outside the Rules given his lengthy period of overstaying. The relationship between the appellant and his sister was not over and above the normal relationship one would expect between siblings. The judge referred to **Kugathas [2003] EWCA Civ 31**.
  6. The judge did not consider the appellant's relationship with his nephew to be exceptional although he accepted that the nephew was having a difficult time and that the appellant had been a support but he did not accept that the appellant was his

only support. He had his mother and there was no credible evidence to suggest that his father did not offer his support.

7. The judge dismissed the appeal on all grounds.
8. There was an application for permission to appeal and permission was granted on 19 March 2019 by the First-tier Tribunal. It had been argued in the grounds that the judge had erred as there was no evidence that the appellant's cousin had returned to the UK and threatened the appellant. It was also argued that the judge had not properly considered the issue of sufficiency of protection in Bangladesh and that the date of the appellant's entry to the UK was incorrect. The First-tier Judge found it arguable that if the evidence relating to the appellant's cousin had been wrongly recorded and findings made on that basis then a fundamental aspect of the appellant's case might be materially flawed. All the grounds were arguable.
9. Ms Begum submitted that the judge had materially erred in considering the appellant's credibility for the reasons given in the grounds on which permission had been granted. She also sought to rely on written submissions that had been served and received on 15 April 2019. The judge had rejected the claim that the appellant had a cousin who was seeking revenge against him and this was "one of the core planks of his claim". The judge's misrecording of the evidence was accordingly a material mistake. An additional argument was sought to be advanced in relation to WhatsApp messages in the appellant's bundle and there was an application to introduce new evidence concerning the issue of delay.
10. The judge had also erred in finding that there was a sufficiency of protection for the appellant as the judge had failed to follow country information. Reference is also made to unreported case law. The judge had failed to consider the evidence provided for the delay in applying for asylum.
11. Mr Kandola submitted that the fresh arguments were not reflected in the original grounds and there had been no application made to amend the grounds on which permission had been granted. He accepted that the point in relation to the cousin's return to the United Kingdom did not appear to be supported in the documentary material. However he submitted it was not a material mistake given the judge's wholesale rejection of the appellant's credibility.
12. The judge had referred to the lengthy delay prior to the asylum claim being made in paragraphs 25 and 28 of the determination. He had given adequate reasons for concluding as he did in the light of the appellant's immigration history. The judge had been entitled to find that there was no evidence that the appellant's cousin had the power and influence claimed in paragraph 29 of the decision. Further he had rejected the claim that there was a land dispute or indeed any ongoing dispute. The judge had comprehensively dismissed the appellant's account, including his claim that he was linked with IJ. He had considered the photographic material. If there had been an error of fact it did not render his credibility findings as a whole unsafe.

It was submitted that the original grounds made no mention of the point now relied upon in the written submissions concerning specific threats referred to in WhatsApp messages. In respect of the second ground concerning sufficiency of protection, this was based on a misreading of what the judge had found in paragraph 29. The judge had not accepted the appellant's account but had rejected it wholesale. In that circumstance there was no need to apply country guidance and the judge was not obliged to take into account unreported determinations in the light of the Practice Direction. Such cases were not binding in any event. In relation to points based on First Information Reports in the appellant's bundle which the judge had failed to properly scrutinise or mention, there was no duty on the Secretary of State to verify foreign documents. In reply it was submitted that the grounds were very similar to the original grounds and simply an elaboration. The point about the judge's error in relation to the cousin's return was simply being elaborated. The additional material should be submitted under Rule 15(2A).

13. At the conclusion of the submissions I reserved my decision. I have carefully considered all the material before me. I remind myself that the appellant needs to establish an error of law before I can interfere with the judge's decision.
14. The main point in this case centres around the issue of the judge's reference to the appellant's cousin returning to the UK in paragraphs 11 and 26 of the decision.
15. It is common ground that this appears to be a mistake of fact but Mr Kandola submits that it is not a material error in the circumstances of this case. As he points out the judge has rejected the appellant's claim in all material particulars. He refers to the lengthy delay in the appellant claiming asylum.
16. The issue of the lengthy delay was not the subject of challenge in the grounds upon which permission to appeal was granted. Permission was sought at the hearing to raise arguments in respect of the judge's findings in relation to the delay. As Mr Kandola submits no application had been made to lodge amended grounds and I see no basis for admitting the new grounds or the the further material. In relation to unreported determinations, as he points out, their citation is governed by Practice Direction 11.
17. The judge having rejected the appellant's claim in all material particulars did not err in finding that there was no credible evidence that he would be at risk on return and the question of sufficiency of protection did not arise. As was submitted at the First-tier hearing by the appellant's representative (paragraph 24 of the decision) the appeal turned on the issue of credibility. The judge did consider the photographic evidence lodged in support of the appellant's claim in paragraph 31 of the determination.
18. I am not satisfied that the grounds upon which permission to appeal was granted raise a material error of law.

**Decision**

Appeal dismissed. The decision of the First-tier Judge shall stand.

It is appropriate to make an anonymity order in this case.

**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.

**TO THE RESPONDENT**

**FEE AWARD**

The First-tier Judge made no fee award and I make none.

Signed

Date 3 May 2019

G Warr, Judge of the Upper Tribunal H