



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

Appeal Number: PA/13575/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 15 May 2019**

**Decision & Reasons
Promulgated
On 20 May 2019**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**R K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, Counsel instructed by Mergul Law Solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was not made by the First-tier Tribunal. However, as this is an appeal on protection grounds, it is appropriate to make that order. 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 his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND

The Appellant appeals against the decision of First-tier Tribunal Judge Geraint Jones QC promulgated on 9 January 2019 (“the Decision”) dismissing the Appellant’s appeal against the Respondent’s decision dated 27 November 2018, refusing the Appellant’s protection claim.

The Appellant is a national of Bangladesh. He originally came to the UK as a student. He had leave until 31 December 2009. Having applied for and been refused leave to remain on the basis of his family and private life, he claimed asylum on 18 May 2018.

The basis of the Appellant’s protection claim is that he is at risk from his uncles in Bangladesh. He claims that his father and his brother were kidnapped in November 2017 and his father was killed. He says that his brother told him that their father was killed by his uncle and that he (the Appellant) had also received threats by telephone. The Appellant also says that there was an argument based on the political differences between his father and uncles before the Appellant left Bangladesh in 2008. He says that his uncles are members of the Awami League. There is reference to the Appellant’s family being wealthy, but it is not clear if the Appellant claims that this has anything to do with the disputes.

The Judge summarised the issues at [6] of the Decision as being whether the claim was credible at all. Even if it was, an issue arose as to sufficiency of protection and the possibility that the Appellant could relocate to another part of Bangladesh to avoid his uncles who are non-State actors. At [17] of the Decision, the Judge gave reasons why he did not believe the Appellant’s claim. At [18] of the Decision, he went on to give reasons why, even if the account were true, there would nonetheless be a sufficiency of protection against the risk. The grounds challenge both findings.

Permission to appeal was granted by First-tier Tribunal Judge Saffer on 5 April 2019 in the following terms so far as relevant:

“3. For the reasons set out in the grounds, it is arguable that there was a material error of law in that the Judge may not have given adequate (or any) consideration to the Appellant’s post interview evidence or challenges to the Respondent’s concerns. All grounds may be argued.”

The matter comes before me to assess whether the Decision does disclose an error of law and to re-make the Decision or remit to the First-tier Tribunal for re-hearing.

DISCUSSION AND CONCLUSIONS

Mr Paramjorthy adopted the written grounds. Although he accepted that the Judge had recorded the evidence before him, he said that the Judge had failed to engage with it. The Appellant did not know why he had lost. His statement sets out his disagreement with the Respondent's reasons for refusing the claim and was not dealt with.

Mr Kotas accepted that a failure to engage with the evidence could and would often amount to an error of law. However, he said that there was no error of law in this case or it could make no material difference for the following reasons:

- (1) The witness statement which the Judge is said to have ignored is merely a recitation of the Appellant's case as put forward in the interview and does not take the case further.
- (2) The witness statement does not explain the delay in making the claim.
- (3) The appeal fails in any event based on the findings at [18] to [20] of the Decision.

I take the two issues separately starting with the credibility findings and then the sufficiency of protection/ internal relocation findings.

Credibility of the Claim

Paragraphs [2] to [6] of the grounds challenge the credibility findings on the basis that the Judge had ignored all evidence save for what was said in the screening and substantive asylum interviews. In particular, it is asserted that the Judge failed to have regard to the Appellant's witness statement and other documents put forward by him in support of his case.

The Appellant produced a bundle running to 150 pages. That included a five page' witness statement, additional documents and background evidence.

Dealing first with the witness statement, that repeats the core of the claim as I have set it out above (taken from the Decision). Although the Appellant points to one or two minor corrections to what he is said to have told the Respondent, the core of that account remains as stated - that is to say that his uncles held different political views (they were Awami League) and quarrelled with his father due to political differences, that his father and brother were kidnapped and that his father was killed because of the political disagreement.

The evidence consists of some photographs of individuals who, as I understand it, are politicians involved with the Awami League. It is not said what is the relevance of these photographs, either in the covering letter or statement. It appears that they may be intended to show such persons at the Appellant's sister's wedding (Q92 of the substantive asylum interview) but that is not explained nor is there evidence to show that the photographs are of the Appellant's sister or the occasion. There are documents which I assume are intended to show that the Appellant's family is well off. Once again, the relevance is not explained. There is a photograph of a man sitting at a desk

said to be Dr [I] and said to be the Appellant's uncle. This appears to show a photograph taken from the internet relating to a Professor [K I] who it appears is a Medical professor. The documents disclose no links of the person in the photograph with the Appellant nor with the Awami League. Similarly, there is another photograph also taken from the internet of a man called [KN] who is said to be the Appellant's uncle and a photograph of a building which I infer has some link to this man by his name. There is no explanation. There is then a medical discharge note dated in March 2018 which appears to relate to what is said at [10] of the Decision. There are then photographs of a man apparently in a hospital setting (who I assume is the Appellant's father) and a death certificate relating to the same man as named in the discharge note, which certificate is dated in April 2018.

The Judge referred to this evidence at [16] of the Decision as follows:

“During closing submissions I was referred to various photographs appearing in the appellant's bundle, said to show the appellant's family, including his uncles, in the company of the various politicians”.

If the evidence at the hearing was intended to overcome the deficiencies which I have noted in the written evidence, those should have been dealt with in evidence and not submissions.

The Judge's reasons for rejecting the credibility of the Appellant's account are at [17] of the Decision and can be summarised as follows:

- (4) The timing of the claim for asylum.
- (5) The Appellant is educated and would realise that he needed to explain that delay in order to succeed: hence why he has brought a claim which relies on more recent events. The Judge comments that “[w]hilst fratricide is not unheard of, it is rare”.
- (6) The Appellant had applied for an extension to his visa in 2008. He had come to the UK in 2003 as he had said. This was inconsistent with his claim to have been in Bangladesh in 2008 and to have been put on a plane by his father because of the quarrel which took place. It was also inconsistent with his claim to have come to the UK in May 2008.
- (7) The Appellant was working illegally in the UK, and did not want to return to Bangladesh because of the different standard of living there. That was the real motivation for the claim.

Taken on their own, I accept that those findings do not explain entirely why the Judge has rejected the credibility of the protection claim. However, they have to be read in the context of what precedes them when the Judge deals with the facts and evidence at [10] to [15] of the Decision. The Judge there deals with certain inconsistencies in the way in which the claim was put forward at certain stages, implausibility and the vagueness of the Appellant's account.

Sufficiency of Protection; Internal Relocation

Even if the Appellant is able to show that the credibility findings are insufficient, he would also have to show that there is an error of law in the Judge's findings in relation to the sufficiency of protection and availability of internal relocation. At [14] of the Decision, the Judge refers to the Appellant being asked why he would be unable to internally relocate within Bangladesh, a country of approximately 163 million people. His answer is that his uncle is a government contractor and would discover his arrival and seek him out because of his connections.

The Judge deals with these issues at [18] to [20] of the Decision as follows:

"[18]Even if I had felt able to accept the core of the appellant's account, this appeal would still have failed. That is because his appeal was put on the basis that the authorities in Bangladesh could not guarantee his personal safety if his uncles wished him harm. That is not the test to be applied. I have to ask whether the appellant has established, the burden being upon him, that the state of Bangladesh does not provide adequacy of protection to its citizens, in the sense in which that concept is understood for the purpose of asylum law (see above)

[19] As I have already mentioned, above, the appellant adduced no evidence in support of that proposition.

[20] I also reject his bland assertion that if he arrived back into Bangladesh, one or more of his uncles would necessarily come to know about it and, equally, would then pursue the appellant to kill him. I should underline the fact that these propositions have no foundation other than the appellant's assertions."

The Appellant's grounds take issue with the Judge's finding that the Appellant had not put forward evidence as to the reach of his uncles because of their politically powerful positions. I have already set out what the evidence in the Appellant's bundle shows - or rather what it does not show. Even if it could be inferred from the evidence that Professor/ Dr [KI] and [KN] are indeed related to the Appellant which is unclear to me based on the documents, the most that the documents show is that one is a medical doctor/professor and the other possibly owns a large building and is wealthy. The documents do not disclose connections with persons or power whether within the Awami League or otherwise or that they have any degree of influence with the authorities. Of course, if there is no error of law in the Judge's credibility findings (as I have found overall to be the case), the evidence does not establish either that these two men have any interest in the Appellant even if they are related as he claims.

Conclusions

I accept that the Judge could have given rather fuller findings in relation to credibility and could have made his views clearer by setting out the inconsistencies and implausibility within his findings rather than in the course of assessing the evidence.

Even if I accepted that the failure to give fuller reasons amounted to an error of law (which on the evidence here I do not), I would in any event have found that error to be immaterial. I am satisfied that there is no error of law in the Judge's findings at [18] to [20] of the Decision in relation to the sufficiency of protection and availability of internal relocation. There is no error of law in those findings on the evidence. On the basis of those findings alone, the Appellant's appeal fails. For that reason, the Judge did not err in dismissing the appeal.

Notice of Decision

I am satisfied that there is no material error of law in the decision of First-tier Tribunal Judge Geraint Jones QC promulgated on 9 January 2019. I therefore uphold that decision with the consequence that the appellant's appeal remains dismissed.

Signed



Date: 17 May 2019

Upper Tribunal Judge Smith