



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

Appeal Number: PA/07457/2018

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 9 January 2020**

**Decision & Reasons Promulgated
On 27 January 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**Z. H.
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard of Fountain Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge McIntosh made pursuant to a hearing on 26 October 2018.
2. The final decision of Judge McIntosh was not promulgated until 9 July 2019. As noted in the grant of permission to appeal, and as I have been able to identify on the court file, this delay appears to have arisen in substantial part because of a requirement that the Judge amend the decision originally drafted and signed on 19 November 2018 to address the issue of anonymity. It is unclear why the delay was so substantial. Be that as it may it does seem that the Judge gave consideration to, and determined,

the substantive issues in the appeal relatively shortly after the hearing itself. In such circumstances I am not persuaded that the delay in final promulgation has in any way affected the reliability of the decision.

3. The Appellant's appeal before the First-tier Tribunal was against a refusal of asylum dated 5 June 2018. The Appellant's immigration history is summarised at paragraphs 6-10 of the Decision of the First-tier Tribunal. In essence he entered the United Kingdom in September 2006 and thereafter became an overstayer. He made an application for leave to remain in April 2017 which was refused on 14 December 2017. It was not until he was facing removal in January 2018 that he intimated that he wished to claim asylum. His asylum claim was based on his involvement with the Bangladesh National Party ('BNP') and an expressed fear of members of the opposing Awami League.
4. In support of his application, and in due course in support of his appeal, in addition to his own testimony and the written and oral testimony of others the Appellant relied upon documentary materials. Those documents appear to have been provided to the Secretary of State and the Tribunal in a piecemeal fashion. Certain documents are incorporated in the Respondent's bundle in accordance with the materials provided prior to the Secretary of State's decision. Further documents on the court file were seemingly submitted with the Notice of Appeal to the First-tier Tribunal. The latter documents include what are purported to be original First Information Reports (and translations) relating to incidents alleged to have taken place in 2013 and 2016.
5. The Appellant's application for asylum was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 5 June 2018. His appeal to the IAC was dismissed for the reasons set out in the decision of Judge McIntosh.
6. The Appellant applied for permission to appeal to the Upper Tribunal which in the first instance was refused on 14 August 2019 by First-tier Tribunal Judge O'Garro, but subsequently granted by Upper Tribunal Judge Keith on 6 September 2019.
7. The decision of the First-tier Tribunal Judge is in very substantial part a rehearsal of the Appellant's case and supporting evidence: at paragraphs 17- 48 the Judge sets out, essentially by way of reporting rather than with any critical or other analysis, the essence of the Appellant's case and the nature of the evidence in support. Amongst other things the Judge refers to the Appellant having provided First Information Reports: paragraph 34 in part is in these terms:

"False charges had been made against him, the first being on 25 October 2013 and a later charge, which is dated 16 October 2016. The first allegation concerned an offence of vandalism for which the appellant stated he had been found guilty in his absence in 2017 and had been given a sentence of one year's imprisonment and 1 lakh fine. The Appellant states in relation to

the latter charge, this was an offence of fighting with the President of the Awami League on 16 October 2016. The Appellant submitted the documents of the charges said to have been filed against him in Bangladesh. The Appellant explained that these documents had been sent to him by his brother who remained in Bangladesh with his mother."

8. Paragraphs 49-57 of the Decision set out the submissions made on the Appellant's behalf. (There were no submissions at the hearing on behalf of the Respondent, no representative having appeared before the First-tier Tribunal.) It is not until after paragraph 57 that the sub-heading 'Decision with Reasons' appears; and even then it is not until paragraph 62 that anything by way of analysis or fact-finding is set out.
9. At paragraphs 62 and 63 the Judge considers the Appellant's role within the BNP and appears to reach a conclusion which accepts that the Appellant had an association with the party but at a relatively low level: paragraph 63 concludes "*I find on the evidence of the appellant that his role would not have been significant or high profile within the party*". Necessarily such a finding is not adversely determinative of the Appellant's case.
10. Paragraph 64, which has been the focus of criticism in the grounds of appeal, is in these terms:

"The Appellant's description of his attack as being motivated by the fact that he was a member of the BNP, whilst his attackers, were members of the Awami League who were known to him. The Appellant does not explain why although his attackers were known to him, he failed to identify them individually and failed to see the attack upon him as a personal attack as opposed to his membership with the BNP. I find that the account given in the witness statement does not satisfactorily explain the Appellant's description of not being individually targeted but being one of a group, when no-one else was attacked during the incident and he accepts that no-one else was present."

11. In granting permission to appeal Upper Tribunal Judge Keith made the following observation:

"The FTT's explanation for what she concluded about the appellant's knowledge of the identities of his assailants and their reason for attacking him at 64 of the decision is arguably unclear to the extent that the reasoning is arguably defective."

12. I find that the reasoning is defective. I am unable to follow the reasoning. I understand the context: the Appellant was set upon by members of the Awami League when he was on his own. I also see that that the Judge is attempting to wrestle with the concept of whether this was an assault on the Appellant as an individual (i.e. personal) or arising from his political involvement (i.e. belonging to a political grouping). I am unable to

understand from paragraph 64 - or otherwise from the Decision - *why* the Judge seemingly rejected the possibility that the attack was politically motivated. The mere fact that the Appellant was alone is not sustainably reason enough. Nor in this context does the Judge appear to have factored in or addressed in his reasoning the nature of the comments and observations the Appellant claims to have made which triggered the assault.

13. The only other aspect of the Appellant's narrative account on which the Judge appears to have made any clear finding is in respect of a newspaper report that the Appellant had provided detailing claims that his family were being harassed: see paragraph 65.
14. Accordingly, the overall conclusion stated and restated at paragraphs 66 and 67 - that the Appellant had failed to demonstrate he was at risk and thereby entitled to protection - appears to be founded on no more than an unsustainably reasoned consideration of the motives of attackers, and the rejection of newspaper evidence of family harassment.
15. Perhaps more troubling than the observations and comments above in respect of the inadequate reasoning at paragraph 64 is the Judge's observation at paragraph 68. Having again stated a conclusion to the effect that the Appellant was not entitled to protection the Judge then says this halfway through paragraph 68:

"I do not accept the documentary evidence or other suggested supporting evidence that the appellant would attract adverse attention upon return to Bangladesh. I do not find the appellant to be a credible witness in relation to the role he suggests he played in the BNP in Bangladesh. I therefore find no evidence to support a need for international protection."
16. This brief, and seemingly passing, reference - sandwiched between restatements of a failure to establish a need for international protection - is the only reference under the 'Decision and Reasons' sub-heading to any documentary materials other than the newspaper report, relied upon by the Appellant. The reader is left completely in the dark as to whether or not the Judge accepted the First Information Reports but concluded that they did not give rise to a risk, or did not accept them as being reliable evidence of the truth of their contents. If the latter, the reader is left with no clear indication as to *why* the Judge rejected such reports. The reasoning is inadequate. Mr Mills acknowledges as much and does not seek to resist the challenge raised by the Appellant in light of such circumstances.
17. I conclude that the decision of the First-tier Tribunal Judge was in error of law and requires to be set aside. It is appropriate that the Appellant have a further opportunity to put his case in its entirety with all issues at large before a different Judge at First-tier Tribunal level.

18. I should additionally make an observation in respect of the documentary materials that were before the First-tier Tribunal Judge and are on file. As noted above some materials appear to have been submitted for the first time with the Notice of Appeal. Those materials necessarily were not in the Respondent's bundle, and for reasons that are unclear did not find their way into the Appellant's appeal bundle subsequently filed with the Tribunal. In consequence, whilst such documents are on the court file the Secretary of State does not have those documents. (The matter was seemingly not remedied before the First-tier Tribunal, there having been no Presenting Officer at the hearing.) More surprisingly the Appellant's own representative before me did not presently have copies of such documents. In the circumstances arrangements will need now to be made for copies of the documents to be retained on the court file, and the originals returned to the Appellant's representative for incorporation into a consolidated appeal bundle which should then be filed and served on the Tribunal and the Secretary of State in the usual way.
19. Otherwise for relisting this appeal, standard directions will suffice. An interpreter in the Bengali language will be required. The case is to be relisted before any First-tier Tribunal Judge other than Judge McIntosh.

Notice of Decision

20. The decision of the First-tier Tribunal contained a material error of law and is set aside.
21. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge McIntosh with all issues at large.

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 his 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.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: 21 January 2020

Deputy Upper Tribunal Judge I A Lewis