



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

Appeal Number: PA/07951/2019

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 12 March 2020**

**Decision & Reasons
Promulgated
On 28 April 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**JA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Razzaq-Siddiq, counsel

For the Respondent: Mr C Howells, 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 of 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 1 January 1960. He left Bangladesh on 5 October 2005 and subsequently entered the United Kingdom as a visitor. His leave expired on 4 November 2005 and his subsequent application for leave outside the Rules was refused on 26 November 2009. He was served with an IS151A illegal entry notice on 8 December 2009.
3. On 3 October 2018, the appellant claimed asylum. He claimed that he was at risk on return to Bangladesh because he was politically active with the BNP and a number of false allegations had been made against him by members of the Awami League. He feared persecution if he returned to Bangladesh.
4. On 19 July 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the European Convention on Human Rights.

The Appeal

5. The appellant appealed to the First-tier Tribunal. In a decision sent on 29 September 2019, the First-tier Tribunal (Judge Suffield-Thompson) dismissed the appellant's appeal on all grounds. The judge made an adverse credibility finding and rejected the appellant's account that he was a BNP activist and that he would be at risk on return to Bangladesh. She also rejected the appellant's claim under Art 8 of the ECHR.
6. The appellant sought permission to appeal to the Upper Tribunal against the judge's adverse decision dismissing his asylum claim. No challenge was made to her decision to dismiss the claim under the ECHR.
7. Initially, the First-tier Tribunal rejected his application "as not admitted" because it was made out of time and the judge (Judge J K Swaney) declined to exercise her discretion to extend time. She also found the grounds not to be arguable.
8. The appellant renewed his application to the Upper Tribunal. In a decision dated 17 December 2019 the Upper Tribunal (UTJ Finch) granted the appellant permission to appeal on the following basis:

"In her decision the Judge failed to give sufficient consideration to a number of pieces of evidence in the Appellant's large bundle. In particular, she failed to take into account the letter from Mr. Miah and documents relating to the Appellant's political activities in Bangladesh.

It is also clear that a large number of the documents had been translated and certified in the United Kingdom.

As a consequence, there were material errors of law in First-tier Tribunal Judge Suffield-Thompson's decision and it is appropriate to grant permission to appeal".

An Initial Point

9. It will be clear from the history of this appeal which I have set out above that Judge Swaney, when considering the appellant's application for permission to appeal, declined to admit the application as it was out of time and she declined to exercise discretion to extend time. When the renewed application came before the Upper Tribunal, it was, therefore, a case to which rule 21(7) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) applied (see Bhavsar (late application for PTA: procedure) [2019] UKUT 196 (IAC)). In particular, by virtue of rule 21(7)(b):

"The Upper Tribunal must only admit the application if the Upper Tribunal considers that it is in the interests of justice for it do so".

10. In granting permission, UTJ Finch did not address this issue under rule 21(7). Before me, Mr Howells, who represented the Secretary of State, accepted that I could, and I should, exercise discretion under rule 21(7) to admit the application in the interests of justice in all the circumstances. I should then consider the merits of the appeal on the basis of the grounds.
11. In my judgment, that is an appropriate course to take. Judge Finch's grant of permission was, in effect, a conditional grant of permission which I can perfect by exercising discretion under rule 21(7)(b) to admit the application in the interests of justice and, thereafter, adopt Judge Finch's grant of permission. I take into account all the circumstances including the merits of the application and I see no reason to disagree with Mr Howells' invitation to admit the application. Consequently, I exercise discretion to admit the application in the interests of justice and I turn now to the merits of the grounds.

The Submissions

12. Mr Razzaq-Siddiq, who represented the appellant, relied upon three grounds which, he submitted, demonstrated that the judge had materially erred in law in reaching her adverse credibility finding.
13. First, he submitted that the judge had failed to take into account, as Judge Finch had eluded to in her grant of permission, a letter from Mr Miah at page 15 of bundle A. This letter, he submitted, complemented the letter from the appellant's wife which the judge referred to in para 55 of her determination and supported her evidence that she had been harassed, verbally abused and threatened with kidnap by Awami League activists as a result of her husband's political activism in Bangladesh. He pointed out that Mr Miah was the chairman of the local Kelayal Union Council and attested to these matters "following investigations by my people". The judge had made no reference to this letter when she had concluded that she would give "little weight" to the letter from the appellant's wife supporting his claim.

14. Secondly, Mr Razzaq-Siddiq submitted that the judge had fallen into error by failing to take into account a number of documents contained within the respondent's bundle. He relied upon on a supportive letter from the President of the BNP in Bristol (at A); further, he relied upon a number of documents relating to two false claims that the appellant said had been made against his father and himself in 2002 and 2013 respectively by Awami League members. The first relates to a claim against his father relating to land (at B) which the appellant explained at para 15 of his witness statement as follows:

"The letter to the Nawabgani Police Station is a claim made against the family land. When the dispute mentioned therein was initially raised my father was still alive. At this time BNP were in power, a community group, led by the Awami League made the claim against the land. This dispute was a direct retaliation of my appointment to 3rd in the BNP of our locality. This dispute is still ongoing".

15. He also relied upon a report document (at X) which related to an application for "anticipatory bail" in June 2004. Further, he relied upon a document amounting to a complaint by a person in the Awami League alleging, falsely he claimed, conspiracy to embezzle money which, as he explained in para 20 of his witness statement, was brought by the chairman of a company who was running for election in 2001 for the Awami League: "He had asked me to join the party and I had refused as a senior member of the BNP. [MR] was a manager within the company and it was him who brought the complaint. I had to attend the police station many times as a result of this complaint". [At H]. Finally, he relied upon a letter from the BNP Branch in Dhaka supporting his claim to be a BNP activist and at risk.
16. Mr Razzaq-Siddiq submitted that the judge had failed to take these documents into account. The plausibility of these documents was supported by the *CPIN* 2018 Report which spoke of "political motivated" charges being brought in Bangladesh (see para 6.1.11). He accepted that at para 54 the judge had made reference to "two Bangladeshi court cases against him" but, at para 57 the judge had said this about all the documents excluding the letter from his wife:

"The other documents before the Tribunal had been translated but not in the UK but in Bangladesh which does not comply with the Tribunal's Practice Directions. There were some errors identified in the translations as well so overall, I gave them limited weight".

17. Mr Razzaq-Siddiq submitted that there was no requirement in the First-tier Tribunal's Practice Directions that translations of documents should be made in the UK. In any event, as he took me through the documents, he pointed out that the vast majority had been translated by a company "Ace Language Services" based in Newport.
18. Thirdly, Mr Razzaq-Siddiq criticised the judge's assessment of a photograph at paras 51 and 52 of her determination. He submitted that the Secretary of State's position had been that the photograph was

doctored and that it was, therefore, a fraud. The judge had failed properly to assess whether it was fraudulent and to take into account any explanation by the appellant.

19. On behalf of the respondent, Mr Howells accepted that the judge had erred in law by failing to take into account Mr Miah's letter when assessing the reliability and weight to be given to that of the appellant's wife. Further, he accepted that the judge had been wrong to fail to take into account documents on the basis that they had been not translated in the UK. He accepted that that was not a requirement of the Rules and, in any event, most had been translated in the UK. He did not accept that the judge had erred in assessing the reliability of the photograph relied upon by the appellant said to be taken with a prominent Bangladeshi politician.
20. Mr Howells, on behalf of the respondent, submitted that any errors by the judge were not material to her decision.
21. As regards the assessment of the letter from the appellant's wife, Mr Howells pointed out that the judge, in para 55 of her determination, noted that the appellant's own evidence was that he and his family had not been threatened in Bangladesh so, on the basis of that material inconsistency between her letter and his evidence, had the judge taken into account Mr Miah's letter it would not have affected her decision in relation to the weight to be given to the wife's letter. Further, in assessing the documents, the judge did note both in paras 13 and 57 of her determination that there were errors in translation. On that basis, Mr Howells submitted she would not have accepted the documents as reliable in any event. Finally, Mr Howells pointed out that the judge had given a number of reasons for disbelieving the appellant's account including that he only had a vague knowledge about the documents and the BNP itself (see paras 45-49). The grounds did not challenge a number of significant credibility findings at paras 45-46 and 48-49. Mr Howells submitted that the appellant's reliance upon the *CPIN* Report that opposition parties, such as the Awami League, might use "politically motivated cases" was contained in a 2015 and 2018 Home Office Reports and could not, contrary to the appellant's (now) submission, support the plausibility of politically motivated cases over fifteen years ago. Mr Howells also pointed out that the judge had relied upon s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and the "huge delay" which "seriously impacts on his credibility". In short, therefore, Mr Howells submitted that the judge would have reached the same adverse credibility finding even if she had not fallen into error.

Discussion

22. Mr Howells accepts that the first two grounds relied upon by Mr Razzaq-Siddiq were errors of law. I agree. They are the points that particularly led Judge Finch to grant permission. I accept that the judge fell into error in assessing the weight to be given to the supportive letter from the appellant's wife by not considering the letter from Mr Miah which, on its

face, was consistent with, and supported, what was being said by the appellant's wife. I do not accept Mr Howells' submission that the judge would inevitably have rejected both the letter from the appellant's wife and (now) Mr Miah on the basis that the appellant in question 62 of his asylum interview appears to have said that his family were not personally targeted and forced to leave their village. It is far from clear that read with question 61 that is precisely what the appellant was saying. There, he says that "they came to the city and they need to change homes when they are targeted". In any event, I cannot be certain that the judge grappling with the evidence from the appellant's wife, from Mr Miah and, to the extent it is inconsistent, the appellant's answers at interview would inevitably have reached the adverse view that she did concerning both the letter from the appellant's wife and from Mr Miah which were supportive of his claim.

23. Likewise, as Mr Howells accepts, the judge fell into error by not taking into account (she said give "little weight" to) documents relied upon by the appellant (and to which Mr Razzaq-Siddiq referred me in the hearing) at least in part because, in her view, contrary to the First-tier Tribunal's Practice Directions they had been translated in Bangladesh. As Mr Howells conceded, it is not a requirement of the Practice Direction that documents should be translated in the UK but, in any event, most of the documents were in fact translated by a professional translation service based in Newport. I do not accept Mr Howells' submission that the brief rejection of the documents by the judge in para 57, based in part upon that error, was not material simply because, as the appellant had accepted in relation to some of the documents, there were errors in translation. The judge does not set out any of those errors and it is not possible to discern what significance they would have had. I am unpersuaded that the judge would necessarily have rejected all the documents had she properly considered them. I reach that view without regard to the *CPIN* 2018 which may have limited value in assessing claims made against the appellant a number of years ago.
24. That then leaves the third ground relating to the photograph relied upon by the appellant showing him, he said, in the company of a leading Bangladeshi politician. That photograph was torn and, it was the respondent's case, that the appellant's head had been "photo shopped" onto the picture. The judge dealt with this at paras 51-52 of her determination as follows:

"51. I had before me various photographs of the Appellant. There was one in particular that the Home Office had concerns about, and this is a photo that has been damaged and the top right-hand section is missing. The other two pieces have been torn apart and put back together. It shows a group of people, at what seems to be some kind of rally, one of whom is the Appellant. However, the Home Office submit that the head of the Appellant has been 'Photo shot' (*sic*) onto this picture over the head of the real person there. The Respondent submits that not only is it clear that his head has been superimposed but it is clear that this has affected the picture of the man standing behind him.

52. Mr. Razzaq-Siddiq submitted that the onus is on the Respondent to prove that this the photograph has been doctored if they allege it is part of some kind of attempted fraud and they have not done so as they have not submitted it to be analysed. I did not have an expert report before me, but I did notice that there were some unusual aspects to the photograph such as the size of the Appellant's head, the angle of his head and the perspective of the picture. Looking at the photograph I give it little, if any, weight in this appeal".
25. Mr Razzaq-Siddiq took issue with the judge's approach to the respondent's case that the photo was, in effect, a fraud. Although that was clearly the respondent's position, namely that it had been manufactured and was, therefore, not genuine, the judge's reasoning in para 52 is also consistent with her finding that the photograph was not reliable because "there were some unusual aspects to the photograph such as the size of the Appellant's head, the angle of his head and the perspective of the picture".
26. Having heard Mr Razzaq-Siddiq's submissions, I then looked at the photograph myself. In fact, a colour photograph with the right-hand quarter of the photograph torn away was attached to the judge's Record of Proceedings. A judge must be cautious in assessing whether aspects of a photograph are inconsistent with it being genuine in the absence of expert evidence. Of course, there may be very obvious cases that call into question the authenticity of the photograph. Here, the judge relies upon the size and position of the appellant's head in the photograph and, although what is precisely meant by this is unclear, also the "perspective of the picture".
27. Mr Razzaq-Siddiq accepted that the judge was entitled to consider whether or not the photograph was a fraud but in doing so he had to consider the appellant's "innocent explanation". However, the only evidence of that to which Mr Razzaq-Siddiq could direct me was set out in para 13 of the judge's decision where the judge said:
- "He denied that the damaged photograph of him at the rally had been doctored or altered in any way".
28. That of course is not an "explanation" but rather an assertion that the respondent's claim that it is a fraud (having been doctored) is not true.
29. It may well be that the judge's basis for her conclusion in para 52 was not one which would necessarily have been adopted by every judge. In the circumstances, I do not accept Mr Razzaq-Siddiq's submission on ground 3. The judge, in all probability, actually found that the photograph was unreliable. Indeed, if she had thought it was not genuine it is difficult to see why she concluded she should give it "little ... weight" rather than no weight at all. However, if her reasoning was, agreeing with the respondent's submission, that it was a manufactured photograph where the appellant's head had been "photo shopped" onto it, her reasoning does not, in my judgment, fall outside the range of reasonable reasons and decision which would amount to an error of law.

30. Nevertheless, on the basis of grounds 1 and 2, I am satisfied that the judge's adverse credibility finding was materially flawed in law. I accept, as Mr Howells submitted, that the judge gave a number of other reasons that cumulatively led her to find the appellant not to be credible. Those reasons are not challenged in the grounds. I accept that those reasons *might* have been sufficient to sustain the judge's adverse credibility finding. However, for her error not to be material I must be satisfied that those reasons alone would *inevitably* have led her to conclude that the appellant's account was not credible. That is a conclusion which I am unable to reach reading the determination as a whole. Her reasons are intertwined, cumulative and it is not possible, in my judgment, to 'blue pencil' out her errors and conclude that her remaining reasons would inevitably have led her to make an adverse credibility finding.
31. For those reasons, therefore, I am satisfied that the judge materially erred in law in reaching her adverse credibility finding and in dismissing the appellant's appeal on asylum grounds.

Decision

32. Accordingly, the decision of the First-tier Tribunal involved the making of a material error of law and its decision cannot stand. I set that decision aside.
33. The decision to dismiss the appellant's appeal on humanitarian protection and under the ECHR was not challenged in the grounds and there is no reason, therefore, that that aspect of the judge's decision should be re-made. All that has to be re-made is her decision to dismiss the appeal on asylum grounds.
34. Mr Razzaq-Siddiq sought to persuade me that the decision should be re-made in the Upper Tribunal. The difficulty with that course of action is that no factual findings by the judge can be preserved in relation to the appellant's asylum claim. Having concluded that the judge erred in reaching her adverse credibility finding, a new credibility finding has to be made and, despite Mr Razzaq-Siddiq's suggestion, that will require a judge to assess the truthfulness of the appellant's evidence which may well not be limited to his written witness statement and the documentary evidence. Also, no factual findings can be preserved and so all fact-finding has to be undertaken again. This is, in my judgment, applying para 7.2 of the Senior President's Practice Statement, an appropriate case to remit to the First-tier Tribunal for a *de novo* rehearing albeit limited to the appellant's asylum claim.
35. In those circumstances, therefore, I remit the appeal to the First-tier Tribunal to re-make the decision *de novo* in respect of the appellant's asylum claim to be heard by a judge other than Judge Clemes.

Signed

A handwritten signature in black ink, appearing to read "Andrew Grubb", with a horizontal line underneath.

A Grubb
Judge of the Upper Tribunal

18 March 2020