



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12710/2019**

THE IMMIGRATION ACTS

**Heard at Manchester (via Skype)
On 06 April 2021**

**Decision & Reasons Promulgated
On 06 May 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

**Between
MF**

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mustafa instructed by Diplock Solicitors.

For the Respondent: Mr McVeety Senior Home Office Presenting Officer.

DECISION AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Abebrese ('the Judge') promulgated on 18 September 2020, in which the Judge dismissed the appellant's appeal on all grounds.
- 2.** Permission to appeal was granted by the Upper Tribunal on the basis it was said to be arguable the Judge did not give adequate reasons for rejecting evidence from various witnesses and did not make sufficient findings of fact.

- 3.** The appellant asserts the Judge made errors of fact in relation to when elections in Bangladesh took place, erroneously diminishing the appellant's credibility at [24] as a result of a belief the last election occurred in 2015 whereas in fact it was 2019. The Judge held the delay between making a claim in 2019 and the election in 2015 as being relevant to the merits of the claim. It is also argued the Judge erred in law in relation to the appellant's immigration history in finding that all of the appellant's application for leave were rejected when his leave to remain as a student was extended until 2015.
- 4.** The appellant also asserts the Judge erred in law in making unsafe credibility findings contrary to SM (section 8: Judge's process) Iran [2005] UKUT 00016 in finding the appellant's delay in making a claim for international protection to impact upon the credibility of the claim but makes very few other findings supported by adequate reasons as to why it was appropriate to find the appellant lacked credibility.
- 5.** Whilst this may be the eventual outcome, the appellant was entitled to have the basis of his claim properly considered and if the Judge found him not to be credible to be able to understand why when reading the decision. Mr McVeety accepted in his response that there is merit in this argument, which he did not feel able to adequately counter, for although a few other points are made by the Judge it was accepted the section 8 argument was treated as being determinative of the credibility issue.
- 6.** It is also argued the Judge erred by finding that documents were not authentic when the genuineness of the documents had never been raised by the respondent as opposed to the reliability of the same and the weight that may be placed upon the documents. It was argued that it was unfair of the Judge to make such a finding without properly addressing where the burden of proof lay or raising such concerns with the parties. Such complaint is made out. It is not clear whether the Judge took into account the appellant's explanation for the documents, especially as the explanation is said to be incorrectly recorded at [20] and [26], and no reasons for rejecting the explanation is given.
- 7.** The argument the Judge failed to adequately consider the evidence is also made out. Whilst the Judge was right to note the case papers referred to a land dispute there is no reference to the country information suggesting that cases are fabricated against opposition members and often contain broad and vague allegations, and how this was factored into the assessment of the evidence.
- 8.** It is also asserted the Judge erred in law by referring to the appellant as "she" and to have originated from Nigeria, but I do not find such errors material as the Judge was clearly aware the appellant is male and from Bangladesh. These matters, however, support the argument of lack of proper checking of the determination by the Judge as does the fact there are two paragraphs 24 to 27.
- 9.** It is also argued the Judge failed to consider when assessing paragraph 276 ADE the fact the appellant belongs to an opposition

- party that has been declared illegal and failed to properly consider matters relevant to paragraph 276ADE(1)(vi) and Article 8 ECHR.
10. I find the cumulative effect of the errors pleaded and accepted by Mr McVeety are such that the determination cannot stand. There is a failure to properly consider the evidence, the sustainable argument in relation to the proceedings, numerous errors disclosed in the grounds, and a failure to provide sufficient reasons such that the reader is able to understand why they won or lost the appeal.
 11. For the reasons set out in the grant of permission to appeal and the grounds drafted by Mr Mustapha dated 4 November 2012, the I find the Judge has erred in law in a manner material to the decision to dismiss the appeal such that the decision is set aside. I find there can be no preserved findings as a result of the failure to properly consider the evidence and failure to give adequate and sufficient reasons in support of the findings made.
 12. Having regard to the guidance concerning remittal of appeals to the First-tier Tribunal, and in light of the extensive fact-finding require to be made to deal with all relevant issues in relation to this appeal, I find it is appropriate in all the circumstances for the appeal to be remitted to Taylor House to be heard afresh by a judge other than Judge Aberbrese.
 13. I record that Mr Mustafa submitted that the statement by the Presenting Officer before the First-tier Tribunal that the party of which the appellant was a member has been declared illegal by the authorities in Bangladesh should be a preserved finding, but it is not made out that a specific concession was made to that effect. Mr McVeety indicated he will do all he can to communicate this request to the First-tier Tribunal Presenting Officers unit and to advise them of this issue being raised. If the matter is not contentious and not in dispute the parties are advised to communicate such both to themselves and the First-tier Tribunal tasked to consider this matter fresh prior to the next hearing.

Decision

14. **The Judge materially erred in law. I set the decision aside. This appeal shall be remitted to the First-tier Tribunal sitting at Taylor House to be heard afresh by judge other than Judge Aberbrese.**

Anonymity.

15. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson
Dated 7 April 2021