



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

Appeal Number: PA/08435/2019
UI-2021-001501

THE IMMIGRATION ACTS

**Heard at Field House
On 6 May 2022**

**Decision & Reasons Promulgated
On 5 July 2022**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**MSM
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett, Counsel instructed by Londonium Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant respondent is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. I make this order because the appellant claims that he needs international protection and publicity might endanger his safety.
2. This is an appeal by a citizen of Bangladesh born in 1983 against the decision of the First-tier Tribunal dismissing his appeal against the decision of the

respondent on 21 August 2019 refusing him asylum and/or leave to remain on humanitarian protection and human rights grounds. The appeal has previously been determined unsatisfactorily.

3. Permission to appeal was given by the First-tier Tribunal primarily because when determining the appellant's claim on Article 8 grounds the judge incorrectly referred to an "insurmountable obstacles test" under paragraph 276ADE when the Rules make no such provision but refer, as is well-known, to "very significant obstacles".
4. There is a Rule 24 notice served by the Secretary of State but not written by Mr Whitwell which addresses other issues but has little if anything to say on that point.
5. Before me Mr Burrett, wisely, said little about the grounds relating to the First-tier Tribunal's adverse credibility finding. It is right to say that the First-tier Tribunal Judge, although conspicuously making up his own mind, like the Secretary of State disbelieved the appellant's claim and the First-tier Tribunal Judge said so in unusually emphatic terms.
6. The very critical adverse credibility finding is in the form of a reasoned decision made after an overall evaluation of the evidence. The decision is over 198 paragraphs taking up 41 pages. Whilst it may not have been strictly necessary to have gone into the case in all this detail it is certainly a very thorough analysis of the available evidence. I mean Mr Whitwell no disrespect whatsoever when I say that one of his strongest submissions was the suggestion that I read the Decision and Reasons thoroughly and carefully before making my decision because that it is the only way to do it justice.
7. Overall I am satisfied that the judge's adverse credibility findings are reasoned and built on sound foundations and were clearly open to the judge and the grounds really are no more than an expression of disagreement with conclusions that the appellant does not like.
8. The judge was clearly concerned that the appellant had been in the United Kingdom for nine years, on his version of events, without claiming asylum but prompted to claim when he was discovered by enforcement officers.
9. The judge analysed carefully a body of documentary evidence from Bangladesh purporting to show that the appellant was the unjust victim of a trumped up trial which led to him being the subject of a prison sentence that would be imposed in the event of his return. The judge found the evidence profoundly unimpressive. It was internally inconsistent or incoherent and showed no attempt being made to defend the appellant on the basis that he was out of the country at the time he was supposed to have been committing offences.
10. Further the offences appeared to have been the result of a riot arising from a protest against an event that did not happen until after the protest had taken place.
11. Explanations were offered for the inconsistencies and difficulties but the judge found that, cumulatively, the explanations made no sense. The judge looked for supporting evidence elsewhere, not in the mistaken belief there was need

for corroboration but in an attempt to make sense of the evidence that was before him and found nothing or nothing of substance.

12. Overall the adverse credibility findings are entirely justified and the judge's decision that the appellant had not shown that he needed protection was plainly open to him.
13. However, as indicated above, I cannot avoid finding that the judge did at least identify a wrong test when he considered the appellant's appeal against the respondent's decision that refusing him leave to remain did not contravene his rights under article 8 of the European Convention on Human Rights. The judge referred to "insurmountable obstacles" when considering the effect of paragraph 276ADE(1)(vi) but the rule refers to there being "very significant obstacles to the applicant's integration".
14. It is unclear to me exactly what the difference is between "insurmountable obstacles" and "very significant obstacles". I am inclined to agree with the grounds that "insurmountable obstacles" is a harder and therefore in this context, too stringent test to apply but I do wonder if the difference is all that great. Certainly in the well-known case of **Lal v SSHD [2019] EWCA Civ 1925** where the Court of Appeal looked at the meaning of "insurmountable obstacles", it noted that in the context of EX.1.(b) of Appendix FM to the Immigration Rules "insurmountable obstacles" to family life continuing outside the United Kingdom was defined in EX.2. and includes "a very significant difficulty". It would be wrong to transfer seamlessly a definition from one part of the Rules to another but I do make the point that in a different part of the Rules the phrase "insurmountable obstacles" is positively defined with reference to "a very significant difficulty". Although there is on the face of it a misdirection it is not immediately obvious that there is a material misdirection. There may well be cases when the difference clearly matters. This is not such a case.
15. I do appreciate that the appellant is entitled to a decision that is right in law. It is not my role to impose a possible analysis and conclude that that must be what the judge had done. However in this case the judge found, correctly, that notwithstanding the dishonesty in the case it had been repeatedly said that the appellant had contacts with his mother and brother-in-law in Bangladesh and clearly somebody was helping him from Bangladesh because documents were sent. Against the background of much uncertainty arising from dishonesty the judge was entitled to conclude that the appellant would not be returning to a country where he would be isolated socially.
16. The judge also noted that the appellant's physical ill health could be treated in Bangladesh and the judge did not accept that the appellant's mental ill health (the appellant clearly suffers from depression) was of an order that it was wrong to return him. The judge's analysis of the Article 8 balancing exercise is summary but is, I find, sufficient. The point is that the judge clearly recognised that the appellant would be returned to a country where, on the evidence, there would be some support for him. The judge directed himself to Part 5 of the Nationality, Immigration and Asylum Act 2002 and reminded himself, correctly, that little weight should be given to a private life established at a

time when a person's stay was precarious and this appellant's stay was certainly never better than precarious.

17. While there is an expressed misdirection I am satisfied that it is not one that could have made any difference. The judge's findings on conditions on return are a fair deduction based on the other findings in the case and a slightly easier test would not have produced a different result.
18. It follows that I find no material error and I dismiss the appeal.

Notice of Decision

19. The appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 11 May 2022