



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

Appeal Number: UI-2023-003261
PA/50802/2022
LP/00428/2022

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated
On 3 October 2023**

Heard on 22 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MRI
(Anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Hingora, Counsel
For the Respondent: Ms S Sunhah, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Bangladesh born 21 November 1985. He appeals against a decision of Judge of the First-tier Tribunal Farrelly sitting at Taylor House on 27 February 2023. That decision was to dismiss the appellant's appeal against a decision of the respondent dated 16 February 2022 which had refused the appellant's application for international protection. The appellant had entered the United Kingdom on 27 January 2010 on a student visa valid until 3 April 2011. After that

visa expired the appellant overstayed. After two previous unsuccessful asylum claims, he made submissions to the respondent in July 2018 the refusal of which gave rise to the present proceedings.

The Appellants' and Respondent's Cases

2. The appellant told the respondent that he could not return to Bangladesh because of his activities for the opposition Bangladesh National Party. The appellant's brother was a local leader of the government party the Awami League and had used his influence to cheat the family out of certain property. The respondent did not accept the appellant's account was credible stating that in any event even if the appellant was a low level member of the BNP that would not of itself put him at risk. The appellant furthermore had provided no evidence of any sur place activities in the United Kingdom which could potentially put the appellant at risk upon return. There was no reason why the appellant could not return to Bangladesh and resume his life there.

The Decision at First Instance

3. At [27] of the determination the judge commenced his assessment of the evidence in the case. He found that there were considerable credibility issues in the appellant's account for example inconsistencies between the appellant's claimed fear of his brother and the financial support the appellant's brother had given to the appellant which enabled the appellant to study in the United Kingdom. At [28] the judge indicated that he attached little weight to the documents supplied by the appellant which originated from Bangladesh as he found their provenance was uncertain and their reliability was questionable.
4. At [19] he had noted the evidence that a letter said to confirm the appellant's activities did not conform with the appellant's claim to be a secretary of the BNP. At [26] the judge referred to the fact the appellant had produced various letters of support. There had been an unexplained delay in claiming asylum which also damaged the Appellant's credibility. There was no evidence that the appellant had any form of profile or engaged in political activities in the United Kingdom. In relation to the appellant's claim that he had established a private life in this country which would be disproportionately interfered with, the judge noted the provisions contained in section 117B of the Nationality Immigration and Asylum Act 2002 that where an applicant status was precarious or unlawful little weight could be given to a private life established in such circumstances. He dismissed the appeal.

The Onward Appeal

5. The appellant appealed against that decision on two grounds. Firstly the appellant argued that the judge had paid insufficient attention to the documents provided in support of the appeal, There was only the brief

reference at [28] of the determination, see paragraph 3 above. Secondly the judge had not considered adequately or at all the appellants sur place activities which the appellant had been asked about during the hearing. Permission to appeal on both grounds was given by the First-tier Tribunal.

The Hearing Before Me

6. In consequence of the grant of permission the matter came before me to determine in the first place whether there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.
7. For the appellant it was argued that there were two principal grounds of appeal. There had been a failure by the judge to give adequate reasons which went to his assessment of the credibility of the asylum claim. There was a lack of reasoning behind what the judge said at [28] of the determination. It was necessary for the tribunal to explain why a party had won or lost. The judge had outlined the documents relied upon by the appellant but had not dealt with the newspaper article which named the appellant. It was difficult for the appellant to obtain a letter from the Bangladesh National party (BNP). The document in the bundle from the BNP was not considered at all. The determination should be set aside and the matter re-listed for hearing. Insofar as ground 2 was concerned, counsel relied on the written application for permission to appeal.
8. For the respondent it was asked rhetorically what evidence was there in front of the judge for him to consider? The three main documents were an affidavit dated 27 June 2021, a newspaper article 13 August 2018 and a Notarial certificate 27 June 2012 subsequently updated. Although the appellant had provided this evidence he had not made it clear where this evidence came from or how he had obtained the evidence. Because of the inconsistencies in the appellant's account the respondent did not accept that the appellant had brother at or that the appellant would be at risk because of membership of the BNP. The judge had explained at [28] why he rejected the documents, it was because of their uncertain provenance. It was the appellant's case to make. The judge was entitled to make an adverse inference if the appellant did not provide supporting evidence where the documents came from when he had had ample opportunity to provide such evidence as to but had not done so.
9. The appellant had not addressed the concerns of the respondent in the refusal letter and therefore had not made a meritorious appeal. For example the appellant had never addressed from where the lawyers referred to in his witness statement had obtained documents. The appellant had made a claim for asylum some years earlier but had not attended for his interview. In his first asylum claim he had mentioned that he had two sisters in Bangladesh but said nothing about a brother.

The appellant had not addressed the respondent's case on any of these points. There was no error on the part of the judge.

10. In conclusion counsel for the appellant said that the respondent in her submissions had analysed the evidence in the case. If the judge had done that the determination would have stood up to scrutiny but, referring to [28], the two short sentences used by the judge in that paragraph meant that it was not possible to glean from them why the appellant had lost the case.

Discussion and Findings

11. The challenge made by the appellant to the determination in this case is essentially a reasons based challenge. The appellant argues that the judge did not give sufficient reasons for his credibility findings and in particular why he placed no weight on the documents supplied by the appellant. The respondent challenged that documentation on the basis that the documents were inconsistent with earlier versions of the appellant's account and did not in any event give any detail to support the appellant's account.
12. The appellant's argument is in two parts. Firstly that the judge had not considered the documents or given reasons why he placed no weight on them and secondly the judge had not considered the appellant's claim to be at risk upon return because of sur place activities in this country. Whilst it is correct that the judge at [28] is concise, that paragraph needs to be read in conjunction with the cross-examination of the appellant as recorded in the determination. The judge was well aware of the existence of the documents, see [6] and [10] and referred to them.
13. He noted the respondent's argument that the appellant's accounts given at different times were inconsistent. In particular the judge noted the inconsistency between the appellant claiming to be at risk from his brother and the financial support (£15,000) that the brother had given to the appellant. The documents did not provide any detail in support of the appellant's claim seemingly made for the first time during his evidence to the judge that the appellant had engaged in sur place activities. It is difficult to criticise the judge for not considering the appellant's claim to sur place activities when there was no evidence that the appellant had actually engaged in any such apart from his somewhat vague answers in cross-examination. The appellant had been put on notice by the respondent in the refusal letter that there was no evidence of such activities yet the appellant had not responded to that.
14. The judge was concerned with the delay by the appellant in claiming asylum, that the appellant had only made claims in the past after being detained and the appellant had failed to attend an asylum interview. It was noticeable that these aspects of the determination were not criticised but they formed an important part of the judge's

assessment overall of the appellant's credibility. Whilst it can be argued that the judge could have expanded on [28] the issue of the documents providence had been raised by the respondent and the judge was clearly indicating the respondent's concerns had not been allayed by the appellant. As was submitted to me the burden of proof rested upon the appellant, he knew the case he had to meet but he had not met it. The judge was aware of the county background information which he quoted at [32]. Even allowing for the low level activities the appellant claimed, he would not be at risk. In that respect the three documents the appellant complains about are not of assistance in assessing risk on return and the judge was entitled to place no weight on them at [28].

15. Although the appellant had made a claim under article 8 private life, it is clear from the statutory provisions and decided case law that little weight could be given to any private life the appellant might have established during his time in this country during much of which he has been here unlawfully. The judge was in those circumstances quite entitled to dismiss the article 8 aspect of the claim. In essence the appeal in this case amounts to no more than a disagreement with the result but does not indicate any material error of law in the determination. I therefore dismiss the appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

An anonymity order is in place which I continue.

Signed this 22nd day of September 2023

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Judge Woodcraft
Deputy Upper Tribunal Judge