



**IN THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM  
CHAMBER**

Case No.: UI-2023-001607

First-tier Tribunal No:  
PA/50402/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 19<sup>th</sup> of July 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MS (BANGLADESH)  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms Julie Isherwood, Senior Home Office Presenting Officer  
For the Respondent: Mr David Jones, Counsel instructed by Direct Access

**Heard at Field House on 24 June 2024**

*Although the Secretary of State is the appellant in this appeal to the Upper Tribunal, for ease of reference I will hereafter refer to the parties as they were before the First-tier Tribunal.*

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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.**

### **DECISION AND REASONS**

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Colvin promulgated on 7 February 2023 (“the Decision”). By the Decision, Judge Colvin allowed the appellant’s appeal against the decision of the Secretary of State made on 15 June 2020 to refuse his asylum claim made on 26 October 2016.

### **Relevant Background**

2. The appellant is a national of Bangladesh, whose date of birth is 3 July 1987. He entered the UK in January 2010 with a Tier 4 (General) student visa. He was subsequently granted leave to remain as a student until 20 April 2014. His student visa was then curtailed to expire on 30 July 2013. He made an application for leave to remain in April 2014, which was disputed in June 2014, and his appeal against this refusal was dismissed by the First-tier Tribunal on 29 February 2016.
3. The basis of the appellant’s asylum claim was that in March 2016 he discovered that he could not return to Bangladesh because he was facing serious criminal charges made against him by his vengeful first wife and by her father, who was connected to the Awami League, and thereby, through his connections, had the power and influence to lodge false cases against the appellant.
4. The background to the false cases was that he had married his first wife, SS, under pressure from his father and against his own wishes on 9 January 2009. Her family was willing to pay for the appellant to study in the UK and his father believed that this would help the family financially. The marriage took place with only close relatives attending, including the appellant’s parents and brother, as the marriage was to remain secret until the appellant was established. After the marriage, the appellant visited his wife from time to time in Gopalgong (200km away), but stayed in Dhaka to finish his degree.
5. The appellant’s father-in-law gave 19 lakhs to the appellant’s father to pay for the appellant’s studies in the UK. After embarking on his studies in the UK, the appellant married his second wife, MF, in an online ceremony on 10 June 2011 and returned to Bangladesh to formalise this marriage later the same month. He visited his second wife again in 2012. His second wife did not know anything about his first marriage.
6. On 6 August 2014 his first wife divorced the appellant, and then re-married. In October 2014 his former father-in-law brought a case against his father, which was settled out-of-Court with his father agreeing to repay the 19 lakhs. But apart from repaying the dowry money of 5 lakhs, he was

unable to repay the rest, and so he was attacked and he died of his injuries in January 2015.

7. At around the same time, cases were filed against the appellant by the family of his first wife, accusing him of taking part in an attack on a police officer on 5 January 2015 and of being a BNP member. He was also accused of raping his first wife.
8. After his father was killed and false charges were raised against him, he said that he realised that he could not return to Bangladesh, and hence he applied for asylum.

### **The Hearing Before, and the Decision of, the First-Tier Tribunal**

9. The appellant's appeal against the refusal of his asylum claim came before Judge Colvin sitting at Taylor House in the First-tier Tribunal on 25 and 30 January 2023.
10. In the Decision, Judge Colvin recorded at para [3] that as a preliminary matter it was agreed, on the basis of the medical evidence submitted, that the appellant should be treated as a vulnerable witness. At paras [4] to [19] the Judge gave a detailed account of the evidence which the appellant gave, both written and oral.
11. At para [20], the Judge identified the principal documents in the appeal, which included an expert report from Dr Hoque dated 13 June 2022 and an Addendum Report dated 25 November 2022; a letter from the appellant's Lawyer in Bangladesh, Mr Rahman; and various court documents including arrest warrants. At para [21], the Judge set out the main reasons given in the Home Office refusal decision for rejecting the appellant's claim. Firstly, the appellant had failed to substantiate that his former father-in-law was a rich and powerful person with a familial connection to Mulla Kawser. He had also failed to substantiate the claim that his father died as a result of being attacked by his father-in-law. Secondly, it was considered that little weight could be placed upon the documents submitted to show that the appellant had been charged with three offences in Bangladesh. There was no indication as to how or when any of the documents came into the appellant's possession, or how he had obtained them. There were also some errors with dates, and it was considered that fraudulently obtained documents were easy to obtain in Bangladesh. Thirdly, the appellant's delay in claiming asylum engaged section 8(2) of the 2004 Act. He had only claimed asylum after his appeal against the refusal of leave to remain was dismissed. He had never previously raised a fear of his in-laws, or any other fear.
12. At para [23], the Judge set out the summary observations on the expert report of Dr Hoque, which had been made in the respondent's review. Firstly, Dr Hoque's expertise did not obviously relate to the verification of the Bangladeshi court or police documents. Secondly, he did not suggest that he had received training in document verification and he had not

provided or excerpted any examples of documents he had examined in a professional capacity. Thirdly, Dr Hoque acknowledged that the only reliable method of checking a document was to compare it with the original kept in the court's records. Therefore - absent such a check - the documents could not be established as reliable with any degree of confidence. Fourthly, while it was said that having false charges filed by powerful and influential family members was plausible, it did not mean that it was credible. Further, while Dr Hoque had addressed the risk faced by BNP members in Bangladesh, it was noted that the appellant was not such a person.

13. The Judge's findings of fact and consideration began at para [31]. Before considering each of the core aspects of the appellant's claim, the Judge dealt with two preliminary matters raised by the respondent, which were the expertise of Dr Hoque and the reliability of the translation of several documents.
14. The Judge concluded, at para [35], for the reasons which she had given in paras [33] and [34], and in the absence of any further evidence submitted by the respondent in reply to the Addendum Report, that Dr Hoque had shown that he had sufficient expertise to consider and give an opinion on the verification of documents in this case.
15. As to the reliability of translated documents, the Judge concluded at para [37] that, while there were some spelling and grammatical errors, the translations were reasonably sufficient in order to assess what weight was to be attached to the original documents.
16. The Judge addressed the issue of false criminal charges at para [48] to [52]. At this stage, the Judge did not make any findings about the evidence on this issue, but in effect summarised what the evidence consisted of. At [49] the Judge referenced a letter in March 2016 from the appellant's lawyer, Mr Rahman, referring to two charges accusing the appellant of financing terrorism activities and stating that he was sending some documents to the appellant. This was followed by a recent letter from the advocate, Krishna Kumar Dutta, dated 15 January 2023, confirming that all the cases remained active but his assistant was unable to get any paperwork from the court due to the clerk's unwillingness to co-operate.
17. The Judge embarked on an assessment of the evidence at para [57]. At para [58], she said that the case had given rise to significant credibility issues in relation to the appellant's account. After careful deliberation of all the evidence, including the medical evidence, she had reached the conclusion that some aspects of his claim were either not credible or plausible, but that the core claim of facing criminal charges in Bangladesh had been shown to be credible to the lower standard of proof. She went on to give her reasons for reaching this conclusion.

18. At para [65], the Judge said that, as stated by Dr Hoque in his expert report, the false charges accused the appellant of conducting terrorist activities with the BNP, in addition to the sexual assault on his first wife, and they carried a sentence of life imprisonment. If these serious criminal charges were outstanding, as the recent letter from the lawyer suggested, he would be detained at the border on arrival in Bangladesh. Dr Hoque explained that arrest warrants had been digitalised centrally in Bangladesh since 2013, and could be accessed at ports of entry. In his opinion, it would make no difference that the appellant denied being a member of the BNP, or that he denied the charges against him. He would be detained on account of being considered an opposition activist, due to the nature of the charges against him. Dr Hoque also gave reasons why the appellant would not have access to a fair trial, including the fact that access to justice for perceived opposition activists may be severely limited in the current political climate.
19. At para [66], the Judge said that it was a risk of detention by the Bangladesh authorities on false criminal charges that, in her view, brought the appellant within the Refugee Convention as being at risk of persecution on political grounds and at risk of conduct amounting to a breach of Article 3. She was further satisfied that he would not be able to seek sufficiency of protection from the state, or relocate internally within the country to avoid this threat of detention.

### **The Grounds of Appeal**

20. The Secretary of State's grounds of appeal to the Upper Tribunal were settled by Andrea Connor of the Specialist Appeals Team.
21. Ground 1 was that Judge Colvin had erred in allowing a further bundle of evidence to be submitted without proper application of the Procedure Rules. The hearing was adjourned part-heard on 25 January 2023 following the completion of cross-examination, and it was only at the re-convened hearing on 30 January 2023 (and just prior to submissions) that a further bundle of evidence was submitted, despite the objections of the Secretary of State's representative. The Secretary of State was thereby placed at a considerable disadvantage, in that "they" were prevented from a full opportunity to consider the evidence holistically, particularly as at least one document in the new bundle was only translated on 28 January 2023. It was submitted that this procedural error was of such magnitude that it amounted to a material misdirection of law, rendering the determination as a whole unsound.
22. Ground 2 was that the Judge had erred in the consideration of the documentary evidence before her. She had found the appellant to be incredible as to the core of his account, but she went on to accept that the appellant had just about made out his case to be at risk purely on the basis of the court documentation. In doing so, she failed to have regard to the guidance contained in *Tanveer Ahmed*, which demanded that the evidence should be looked at in the round, rather than in isolation.

23. It was submitted that the Judge had placed too much weight on the findings by the expert, Dr Hoque, that a *prima facie* examination of the documents suggested them to be genuine. The expert accepted that he was not trained in document verification, and in any event, he said that the only way to confirm whether documents were genuine was to compare them with the originals at the court in Bangladesh. This was a process which had not taken place, and nor had the plausibility of the appellant's contention that verification attempts had been made in line with the accepted protocol, but these attempts were unsuccessful, been commented upon by the expert. It was thus unclear how the Judge was able to place so much weight on the documents that the appeal was allowed, particularly when the Judge had made extensive criticism of the appellant's evidence as a whole.

### **The Reasons for the Initial Refusal of Permission to Appeal**

24. Permission to appeal was refused by a First-tier Tribunal Judge on 5 May 2023. There was no merit in the ground alleging procedural unfairness. This was a badly formulated challenge, failing to explain why no complaint was made at the resumed hearing that it was unfair to admit the further evidence. Further, although it was indicated that it was capable of making a material difference, this had not been explained. The weight to be attached to the expert report confirming the authenticity of the court documents was a matter for the first instance Judge, absent some public law error. The Judge was entitled to place reliance upon that evidence, for the reasons given.

### **The Renewed Application for Permission to Appeal**

25. In her renewed application for permission to the appeal to the Upper Tribunal, Ms Connor submitted that the complaint in Ground 2 was not a complaint about the weight that the Judge had attached to the expert evidence, but about the weight that the Judge had attached to the documentation referred to in the expert report. The checks that were attempted in order to ascertain the genuineness of the documents were unsuccessful, and it was therefore unclear how the Judge had arrived at the conclusion that, despite the appellant being found incredible as to the core of his account, these "*unverified*" documents enabled the many credibility issues to be discounted in order to allow the appeal.

### **The Reasons for the Eventual Grant of Permission to Appeal**

26. On 22 August 2023, Upper Tribunal Judge Clive Lane granted permission to appeal on both grounds, although he singled out Ground 1 as having *prima facie* merit. He directed that in the event the parties could not, within 14 days of receipt by them of this grant of permission, agree whether the respondent's representative had objected to the admission of the further evidence at the final hearing, both parties should, no less than 14 days prior to the Upper Tribunal initial hearing, file at the Upper

Tribunal and serve on the other party a statement by the respective representative detailing what was said by the other representative regarding the further evidence and how the Judge dealt with any such submissions concerning the evidence.

### **The Error of Law Hearing**

27. At the hearing before me to determine whether an error of law was made out, the appellant was represented by Mr Jones, who had acted for the appellant in the First-tier Tribunal, and the Secretary of State was represented by Ms Isherwood, who had taken on the case at short notice due to a colleague of hers being ill.
28. In response to the directions made by Upper Tribunal Judge Clive Lane, Mr Jones had listened to the entire recording of the hearing in the First-tier Tribunal, and had prepared a transcript which addressed the questions raised by UTJ Lane.
29. Conversely, the Specialist Appeals Team had not been able obtain a statement from Ms Aziz of Counsel, who had appeared for the Secretary of State at the hearing in the First-tier Tribunal.
30. Having had an opportunity to review the transcript in which the relevant passages were highlighted, Ms Isherwood maintained Ground 1 on the narrow basis that the admission in evidence of the third supplementary bundle that was uploaded to the CCD file on 30 January 2023 was procedurally irregular. As to Ground 2, Ms Isherwood adopted the reasoning of Andrea Connor in both the grounds of appeal and in the renewed application for permission to appeal.
31. Mr Jones strenuously opposed the appeal, relying on his Rule 24 response dated 17 November 2023, and on his additional note on Ground 1 dated 20 June 2024. On Ground 1, he submitted that there was nothing in the record of proceedings supportive of the general contention in Ground 1 that the Secretary of State was prejudiced in putting his case as a result of the admission of the additional bundle on the second day of the hearing. As to Ground 2, he submitted that the complaint that the Judge had placed excess weight on the expert evidence was not a legitimate error of law challenge, and that Ground 2 was no more than an expression of disagreement with findings of fact that were reasonably open to the Judge on the evidence, for reason which she had set out with meticulous care.
32. After briefly hearing from Ms Isherwood in reply, and also from both representatives on the issue of future disposal in the event that an error of law was made out, I reserved my decision.

### **Discussion and Conclusions**

33. In view of the grounds of appeal in their totality, I consider that it is helpful to bear in mind the observations of Lord Brown in *South Bucks County Council -v- Porter* [2004] UKHL 33; 2004 1 WLR 1953. The guidance is cited with approval by the Presidential Panel in *TC (PS compliance - "Issues-based reasoning") Zimbabwe* [2023] UKUT 00164 (IAC). Lord Brown's observations were as follows:

"36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in dispute, not to every material consideration...Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

## **Ground 1**

34. Ground 1 raises an allegation of procedural unfairness. As is apparent from examination of the CCD file, and also the transcript provided by Mr Jones, the appeal was adjourned part-heard on 25 January 2024 and the Court re-convened on 30 January\_2024 with a view to hearing closing submissions. In the interim, Mr Jones says he filed a third supplementary bundle on 29 January 2024, but it was not actually uploaded to the CCD file until the following day. It is clear from the transcript that Counsel for the Secretary of State had the opportunity to consider the bundle in advance of the hearing, and that she objected when Mr Jones applied for the bundle to be admitted in evidence. The Judge checked the CCD file, and found the supplementary bundle on it.
35. After Mr Jones had explained the relevance of the material in the supplementary bundle, Ms Aziz submitted that the documents should not be admitted at this late stage, as the evidence had been concluded. She submitted that this showed "*contamination*", as well as showing that there had been a discussion between Counsel and the appellant while the appellant had been giving evidence, when he should not be discussing his case further. The documents should have been forwarded earlier as per the Procedure Rules, and for the documents to be allowed in at this late stage was procedurally unfair. She said that she had been told by the Secretary of State to oppose the documents being submitted.



36. The Judge ruled against Ms Aziz's objection. She said that it would be completely against public policy to say that nothing more could go in before closing submissions.
37. According to the Index to the third bundle, the seven-page bundle comprised a re-translation of a letter dated 6 August 2014; undated photographs of the appellant's medications; and what was said to be photographs of the appellant's second wedding, although Mr Jones clarified before me, as he also clarified before the First-tier Tribunal, that there was in fact only one photograph of the second wedding, which was conducted remotely, and that the other photographs related to the first marriage.
38. As the prescriptions did not have dates on them, and the photographs were undated, Judge Colvin ruled that they had no evidential value. She permitted Mr Jones to re-call the appellant to give evidence about the photographs. Towards the end of his further oral evidence, the appellant indicated that he wished to give evidence about his ongoing medical treatment, but the Judge said that this was not permissible. The Judge then invited Ms Aziz to cross-examine the appellant on the photographs, but she declined to do so. She said that the Judge had asked the questions she was going to ask.
39. The re-translation of the letter dated 6 August 2014 was carried out on 28 January 2023 by Zaks Language Services Limited. In the letter, the author informed the appellant that his wife Sanjida had appeared at his office 'today', making an allegation against him of drug addiction, greed for dowry, womanising, and a failure to provide maintenance. She had gone on to divorce him in his presence.
40. In the Decision at para [40] the Judge observed that there were three documents (with translations) purporting to relate to the subsequent divorce between the appellant and his first wife. The first was a notification of the divorce, dated 6 August 2014, signed by a Ward Councillor and authenticated by a notary public seal; the second was an affidavit regarding the divorce signed by the first wife before a notary public and commissioner of oaths; and the third document was a paper of arbitration relating to the repayment of 19 lakhs by the appellant's father to the first wife's family, including the repayment of a dowry of five lakhs. The appellant's evidence was that the documents were sent to him by his father, who was present at the divorce and arbitration proceedings. The Judge held that these documents had not been specifically commented upon or challenged by the Secretary of State.
41. I consider that it was a reasonable exercise by the Judge of her case-management powers to allow the photographs and the re-translated letter in the third bundle to be admitted in evidence, and for the appellant to be recalled to answer questions about them, even though the documents could, with reasonable diligence, have been provided much earlier. Contrary to what is implied in the grounds of appeal, there is no rule of procedure such that the Tribunal is forbidden from receiving additional

evidence after the case has been formally closed. Although there was no explanation as to why these documents had not been provided at an earlier stage, it was common ground that the appellant was a vulnerable witness, and the admission of the documents did not disadvantage the Secretary of State. Neither the re-translated letter of 6 August 2014 announcing the divorce, nor the photographs of the two weddings, went to a principal controversial issue in the case, and their admission in evidence had no impact on the outcome. Accordingly, Ground 1 is not made out.

## **Ground 2**

42. Ground 2 is badly formulated. The question of how much weight should be attributed to a particular piece of evidence is exclusively the province of the Judge at first instance. Asserting that the Judge at first instance placed too much weight on a particular piece of evidence does not disclose a viable error of law challenge. Far from the Judge's reasoning being deficient, I consider that the arguments for and against the reliability of the police and Court documents were laid out by the Judge with meticulous care.
43. It is not the case that the Judge rejected the core of the claim as being incredible, but then allowed the appellant's appeal on the basis that the police and court documents were credible in isolation. Whereas the Judge found that the appellant was not credible in his claim that his father had been attacked and killed by his father-in-law, the Judge accepted the core claim that the appellant had been targeted by his first wife and father-in-law for his betrayal of both of them.
44. I accept that an obvious weakness in the appellant's case before the First-tier Tribunal is that the advocate who was instructed to verify the case documents on the respective court files failed to do so, simply reporting back that his junior had not been allowed to inspect the files by an uncooperative Court Clerk. Dr Hoque was not asked to opine on the plausibility of this scenario in a further supplementary report. It is also reasonable to question how the advocate was able to confirm that the cases were still ongoing if no inspection of the relevant Court files had been permitted to take place.
45. However, the Judge was only required to apply the lower standard of proof. The Judge acknowledged at para [60] Dr Hoque's evidence that there was no certain way of determining whether the police and court documents were genuine "*without checking with the issuing*" and that therefore his observations in the report were based on a *prima facie* examination of the documents.
46. It was open to the Judge to place considerable weight on Dr Hoque's evidence, which she quoted extensively at para [52], that, after a close physical examination of the documents, he could confirm that on the face of it the documents were reliable as they conformed to official Bangladeshi legal and administrative standards including visible watermarks and

official stamps and as such were likely to be genuine; and that the Notary Public seal which appeared on the translation documents bore the official state emblem in addition to the name of the Notary Public, and there was no discrepancy between the seals examined on the documents and the original design, colour and content of similar seals used by Notary Publics in Bangladesh.

47. It was open to the Judge to find, as she did at the end of para [60], that the fact that the documents had not been verified as genuine through checking did not undermine Dr Hoque's evidence as to their reliability based on a *prima facie* examination of the documents.
48. The Judge went on to find at para [62] that it was reasonable to conclude that the first wife's family had money and this gave them influence; that the appellant's former father-in-law was connected with the Awami League which might go some way to explaining why he was keen to keep the marriage secret until the appellant was established; and that it was reasonable and plausible to think that the way in which the appellant failed to keep contact with his first wife after coming to the UK and then married a second wife before divorcing his first wife may well have led to the family losing face publicly and seeking some kind of reprisal against the appellant by initiating the false charges.
49. Accordingly, it is not the case that it is unclear how the Judge arrived at the conclusion that the appellant was facing false criminal charges that had been instigated by his first wife and former father-in-law. On the contrary, the Judge's line of reasoning was both clear and adequate. Thus, Ground 2 is also not made out.

### **Notice of Decision**

**The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal is dismissed.**

### **Anonymity**

The First-tier Tribunal made an anonymity order in favour of the appellant, and I consider that it is appropriate that the appellant continues to be protected by anonymity for the purposes of these proceedings in the Upper Tribunal.

Andrew Monson  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
17 July 2024

