



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-002538
First-tier Tribunal No:
PA/52922/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 August 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

AA

(ANONYMITY ORDER MADE)

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Ms Bayati

For the Respondent: Ms McKensie, Senior Presenting Officer

Heard at Field House on 2 May 2024

DECISION AND REASONS

1. By an Upper Tribunal transfer order dated 11 April 2023, this appeal was transferred to me from Deputy Upper Tribunal Judge B Keith, who had found that the First-tier Tribunal should be set aside for error of law. Following a resumed hearing, I now give my reasons for remaking the decision.

2. The burden of proof in the appeal is on the appellant and the standard of proof as regards the question of the appellant's nationality/statelessness (the only issue in the appeal) is the balance of probabilities.
3. Deputy Upper Tribunal Judge Keith recorded that [4] '[the appellant] claims to be a national of Burma and claims he was born on 1 January 1984. The [appellant] claims that he is stateless because Burma does not recognise his nationality and that he is not a Bangladeshi citizen. He claims to be Bangladeshi even though he has never naturalised as a citizen. His case is that he has no right to return to Bangladesh.'
4. Deputy Upper Tribunal Judge Keith found that the First-tier Tribunal (Judge Knight) had erred in law by failing to apply the principles of *Devaseelan* (Second Appeal, ECHR, Extra-Territorial Effect) [2002] UKIAT 702. The First-tier Tribunal failed to deal correctly with the decision of a previous Tribunal (Judge Devittie: decision promulgated 6 July 2016).
5. The resumed hearing proceeded by way of submissions only. There was no oral evidence. The burden of proof in the remaking of the decision is on the appellant and the standard of proof is that of reasonable likelihood. In any Article 8 ECHR appeal, the standard of proof is the balance of probabilities.
6. Ms McKensie, for the Secretary of State, submitted that the appellant had failed to discharge the burden of proof upon him in the appeal. The single issue in the appeal was the matter of the appellant's nationality and the appellant had failed to establish that he is stateless and cannot return to Bangladesh. She noted that the appellant had met with officials of the Bangladesh High Commission but submitted that the record of that meeting took the appellant's no further forward. As Deputy Upper Tribunal Judge Keith noted at [12]:

In oral submissions I have been referred to a number of pages of the Subject Access Request ("SAR"). There are several paragraphs referred to in the skeleton argument. The first quote from the Home Office records which are contained within the SAR states as follows:

The subject was successfully interviewed at the non-detained interview scheme at Becket House by the Bangladesh High Commission officials on 27/04/2017.' On 3 May 2017, A notification of refusal to issue an Emergency Travel Document was received from the Bangladesh High Commission. The Bangladesh High Commission informed RL that the subject is a Myanmar national". Page 16 of the subject access request.

This is relied upon by the Respondent to show that he is not a Bangladeshi citizen, however in my judgment it is merely a record of what the Bangladesh High Commission said in 2017 and given the findings of First-tier Tribunal Judge Devittie in 2016 it is of no assistance to the respondent.

Ms McKensie submitted that a proper application of *Devaseelan* should take proper account of the fact that Judge Devittie had found that the appellant was not a credible witness at all. Judge Knight had summarised the findings of Judge Devittie at [39]:

The Tribunal found that there were several unsatisfactory features in the Appellant's account. In particular, it was inconsistent that the Appellant did not speak a Burmese language because he lived as a young child with his claimed Burmese parents (paragraph 19(i)); the Appellant had said in his screening interview that his parents were dead, but in his substantive interview that they were not dead (his evidence being that they were dead to him) (paragraphs 5(iv) and 19(ii)); he was inconsistent about whether he was Rohingya (paragraph 19(iii)); and his evidence about why he had his refugee family book was unclear and he made up evidence about his family as the case progressed (paragraphs 19(iii)-(v)).

As a result, the Tribunal rejected the Appellant's account that he was born in Burma to Burmese parents (paragraph 21). The Tribunal found that the Appellant had not been in a refugee camp in Bangladesh, and was instead a Bangladeshi citizen (paragraph 21). The Tribunal then refused the appeal on asylum and human rights grounds.

7. Ms McKensie submitted that the appellant had also failed to explain why he possesses a surname when the CPIN [7.5.1] stated that such names were not used in Myanmar and that the appellant had failed to reconcile the basis of his current claim for asylum with his earlier claim that he is Rohingya, a Burmese national group whose language he cannot speak; at his screening interview, the appellant had claimed to speak several of the the languages of Bangladesh but not Burma. At the same interview, the appellant had claimed that he wished to live in the United Kingdom because he could earn more money here, a response which undermined his claim to be a genuine asylum seeker. The appellant, she submitted, was not a credible witness and had failed to discharge the burden of proof upon him in the appeal by establishing as facts the elements of his claim.
8. Ms Bayati, for the appellant, submitted that the Tribunal should consider the evidence which had come to light following Judge Devittie's decision, including the record of the appellant's meeting with the Bangladesh High Commission, which she submitted proved that the appellant is from Myanmar.
9. Over several years, the appellant's various claims have become both complex and confusing. Ms Bayati's submissions, in effect, urges the Upper Tribunal to accept the evidence to which Deputy Upper Tribunal Judge Keith had found the First-tier Tribunal should not have attributed substantial weight given Judge Devittie's previous adverse credibility findings. That evidence includes two letters which the appellant instructed his solicitor to send to the Burmese Embassy and the

Bangladeshi High Commission asking for any documents which might establish his true nationality. Regarding these letters, Judge Knight had found that 'The Appellant's actions are more readily explained by his genuine belief in the facts of his asylum claim, than a cynical attempt to bolster his claim, because it would make little sense for him to genuinely engage with the authorities of Bangladesh and Burma if his asylum claim were not genuine.' [66]. Deputy Upper Tribunal Judge Keith, however, set aside Judge Knight's decision principally because the judge had failed to factor in to his analysis Judge Devittie's comprehensive rejection of the appellant's credibility.

10. In essence, Ms Bayati is encouraging the Upper Tribunal to fall into similar error. As Deputy Upper Tribunal Judge Keith observed at [11]:

The difficulty with that reasoning is that it has not engaged with the *Devaseelan* test. Whilst Judge Knight attempts to overrule the 2016 decision he does not do so with any reasoning, simply finding that the letters sent to the embassy and high commission are such that they tend to support the Respondent's case rather than undermining it. However, the 2016 findings are that the Respondent is untruthful and not credible. Those are difficult findings to overturn and would require proper reasoning. There is none in this decision.

11. In my opinion and applying *Devaseelan* correctly, Judge Devittie's findings should be given considerable weight. Moreover, I agree with Ms McKensie's submission that the record of the appellant's meeting with the Bangladesh High Commission does nothing to assist in proving his claim. Following on from Deputy Upper Tribunal Judge Keith's observations, I find that the appellant's instruction to his solicitors to contact the Burmese and Bangladesh missions was, in the light of Judge Devittie's findings, never intended in good faith but was an attempt to bolster a weak and inconsistent claim. The evidence, both that rejected by Judge Devittie and the later evidence on which Deputy Upper Tribunal Judge Keith has rightly cast doubt, fails entirely to discharge the burden of proof on the appellant. He has failed to establish to the necessary standard of proof that he is stateless and that he would be at risk on return to Bangladesh. As a consequence, I remake the decision dismissing the appellant's appeal against the decision of the Secretary of State.

Notice of Decision

I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 14 July 2022 is dismissed.

C. N. Lane

Judge of the Upper Tribunal

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First-tier Tribunal No: PA/52922/2022
Immigration and Asylum Chamber

Dated: 2 July 2024