



IAC-FH-NL-V1

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

Appeal Number: AA/10051/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 2 September 2015**

**Decision & Reasons Promulgated
On 8 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AH

(ANONYMITY DIRECTION MADE)

Respondent/Claimant

Representation:

For the Appellant: Ms E. Tufan, Home Office Presenting Officer

For the Respondent: Ms R. Akther, Counsel

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of the First-tier Tribunal (Judge Majid sitting at Taylor House on 18 February 2015) allowing on human rights grounds the claimant's appeal against the decision to remove him from the UK as an illegal entrant by way of directions under paragraphs 8 to 10, Schedule 2 of the Immigration Act 1971. The First-tier Tribunal did not make an anonymity direction but as the claimant has advanced an asylum claim I consider it is appropriate that he is accorded anonymity for these proceedings in the Upper Tribunal.

2. The claimant, whose date of birth is 1 January 1984, claims to be a national of Burma. He says he resided for a long time in Bangladesh from the age of 8 without residency status before travelling to Europe in 2006 and entering the United Kingdom that year, hidden in the back of a lorry. He claimed asylum on 1 October 2013.
3. His core claim is that he is a Rohingya and as such he is a member of a persecuted ethnic minority group in Burma. He says he cannot be returned to Burma on that account and he cannot be returned to Bangladesh as he has no status there.
4. In the refusal letter the Secretary of State rejected his claim to be a Burmese Rohingya and contended that the claimant is a Bangladeshi national. In support of this contention the Secretary of State relied at paragraph 30 on the findings of a qualified and experienced linguistic expert to the effect that the claimant is a Bangladeshi to a very high degree of certainty and that it is very unlikely that he has a Burmese linguistic background as he has claimed. The Secretary of State reached the following conclusion at paragraph 63:

“It is however considered that you are Bangladeshi. You have not given a reason of fear of why you are unable to return to Bangladesh. Given that you did not claim asylum for eight years despite claiming to leave Bangladesh in fear of your life it is considered you came to the UK for alternative means. You have not provided a reason why you really came to the UK. However it would be reasonable to conclude given that you found employment almost immediately in the UK that you came to the UK for economic reasons. Either way it is considered that you do not have a genuine fear to return to Bangladesh or indeed Burma if your account was accepted which it has not been.”

5. I now refer to Judge Majid’s decision. At paragraph [23] he said:

“In the light of the preceding legal rules it is only fair that in a particular case an individual is not deprived of the protection of the Convention where that course is justified by compelling and exceptional circumstances. Powerful factors are outlined above in the decision which justify the grant of application of the Convention particularly the right to life can protect this appellant because he cannot be sent to Bangladesh since the Home Office is alleging that he is not a Bengli and is only pretending to belong to that nationality. Also the judges cannot forget that all objective reports about Burma are clear to establish that the Rohingya Muslims are maltreated in that country and relevant to this decision, the Bangladeshis do not welcome the refugees coming from Burma.”

At paragraph [24] he said:

“The appellant can only be sent to Burma the nationality of which he asserts and as given in the asylum application to the Home Office, screening interview and asylum interview.”

At paragraph [27] he reached the following conclusion:

“Accordingly in view of my deliberations in the preceding paragraphs and having taken into account all of the oral and documentary evidence as well

as the submissions at my disposal, cognisant of the fact the burden of proof is on the appellant and the standard of proof is on the balance of probabilities, I am motivated to allow this appeal under human rights due to the fact that the appellant can only be returned to Burma.”

6. The Secretary of State applied for permission to appeal raising, inter alia, the following grounds:
 - (1) The determination was devoted largely to an extraordinary and irrelevant discourse on a number of matters including the political motivation of the human rights legislation.
 - (2) The judge failed to make any findings on any of the key issues, most notably whether the appellant is a national of Bangladesh or Burma. The refusal letter makes it plain that a language analysis had found the claimant with a high degree of certainty to be a national of Bangladesh. The judge made no reference to this.
 - (3) The judge made an extraordinary finding in paragraph [26] that it would be absurd to contemplate that the appellant would be safe to be returned to Burma, and therefore he allowed the appeal on human rights and he would let the Secretary of State cope with the situation under whichever Rule she thought appropriate: “Of course the Home Secretary has the administrative discretion to obviate any absurdity which leads to injustice.” It was for the judge to avoid injustice: removal directions were to Bangladesh. There was no indication as to which Article of the Human Rights Convention the judge felt was appropriate.
 - (4) The judge made no findings at all in relation to the Refugee Convention.
7. Today I have had the benefit of receiving submissions from both Mr Tufan and Ms Akther who appears on behalf of the claimant. Ms Akther is in agreement that the decision of the judge failed to make relevant findings, and that he misdirected himself on the Secretary of State’s case, including on the crucial fact that she believed him to be a Bangladeshi national; and so she proposed to remove him to Bangladesh, not Burma. Both parties have been deprived a fair hearing on the issues in controversy, and I am in no doubt that the decision is vitiated by a material error of law for the reasons set out in the application for permission; and I find that this is an appropriate case for the appeal to be re-heard in its entirety in the First-tier Tribunal, before any judge apart from Judge Majid. Accordingly, I will make appropriate directions to reflect this decision.

Conclusion

The decision of the First-tier Tribunal contained an error of law and accordingly the decision is set aside and it is remitted to the First-tier Tribunal for a de novo hearing to remake the decision before any judge apart from Judge Majid. None of the findings of fact of the previous tribunal will be preserved.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the claimant and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Monson