



**Upper Tribunal  
(Immigration and Asylum Chamber)  
02618/ 2017**

**Appeal Number: PA/**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 27 June 2017**

**Decision &**

**Promulgated**

**On 13 July 2017**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**S K B**

**(ANONYMITY DIRECTION MADE)**

**and**

Appellant

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms C Warren, Counsel instructed by Alex Bell Immigration Law

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because there is always a risk in protection cases that publicity will itself create a risk to the applicant's safety in the event of his return to his country of nationality.
2. This is an appeal against a decision of the First-tier Tribunal dismissing the appellant's appeal against the decision of the respondent that he is not a refugee or otherwise entitled to international protection.

3. In very simple terms the appellant is a citizen of Bangladesh who follows the Hindu religion and who has tried to establish a career in the British Army but who did not complete his basic training because he was injured. Without in any way suggesting that it is an appeal that ought to have succeeded, it is clear from background evidence that minority groups such as Hindus in Bangladesh are having difficulties. This is something which is known to the Secretary of State and something with which the Tribunal must deal when the occasion arises.
4. The judge disbelieved the appellant in many aspects of his case. I wish to make it plain that there are reasons in the decision which could, possibly, lead to a proper conclusion that the appellant has not told the truth. However, I am satisfied that some of the reasons that have been relied on to support that conclusion should not have been relied upon and that the credibility findings as a whole are irredeemably tainted by points that should not have been made.
5. As Mr Kotas, I think, accepted, the jewel in that particular crown is the finding by the First-tier Tribunal that the appellant was to be disbelieved because he had not supported his claim with medical evidence but the fact is that he did support the claim with medical evidence and that the judge ignored. The evidence appears is that a medical report was made available when the application was made and the judge misunderstood the evidence. I regard that as a bad mistake and one which has, at least to some degree, impacted on all the other findings so that they are unsound.
6. Another point that concerns me considerably is the analysis of the medical evidence about the injuries sustained by the appellant's father. At paragraph 38 of the Decision and Reasons the judge says "The comment states 'all injuries are simple in nature caused by blunt weapon number 3 injury attempted of throttling'." I assume that the judge is accurately quoting the report author's eccentric grammar. Very soon afterwards the judge says "I find that the injuries could have been caused by an accident". I am completely at a loss to see how injuries caused by attempted throttling could be caused by accident, certainly without some explanation to make that highly improbable chain of events in the least bit credible. It concerns me the judge reached the conclusion that she did for that reason in the context of an asylum appeal. There may be other reasons for disregarding the medical evidence, I make no comment on that. The judge has not disregarded it; she has accepted it and then decided for herself that the signs of throttling could have been caused by accident. I do not see how that can be justified.
7. There is a similar but less serious problem in the next paragraph where the judge opined, for no discernible reason, that if the appellant's father had been injured as alleged, he would have been more seriously injured. That to me looks like speculation at best and really should not have featured in the decision.
8. The judge was quite satisfied that the appellant had given inconsistent evidence about the number of occasions the family had reported problems to the police. The judge found the evidence was inconsistent but I am not at all sure that that is justified.
9. At question 67 the appellant was asked what did his family do in response to the threats and he replied that his mother went to the police station on the

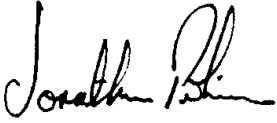
third occasion. He was then asked at 68 “Had your family been to the police before?” and he replied with another question, “Before as well?” The officer did not explain but simply repeated the question and the appellant is recorded as saying “Two times”. Whether that meant two occasions before the one he had just been talking about or two in all was not established. It should have been. It is not difficult to ask a further supplementary question so that the meaning of the answers is clear.

10. It is also a matter of surprise that the judge appears to have ignored evidence from the appellant’s solicitors that they went to the trouble of gathering in response to criticisms in the refusal letter about the source of documentary evidence in the form of a newspaper report. The appellant’s solicitors say that it came from the Bangladesh Hindu, Buddha, Christian Unity Council and had produced evidence to that effect. It does not follow from that claim that the evidence is reliable but the judge does not seem to have addressed the explanation at all and I find that a concerning error.
11. It is also a matter of comment that the judge found that the appellant had tried to join the British Army for entirely cynical reasons. As was pointed out in argument, foreign nationals in some circumstances are excused immigration control if they serve in the British Army. It is an incentive to serve and is not a reason to be held against people who chose to take advantage of the opportunity that the state offers. Quite why the judge went in this direction is not clear and it necessarily sets up the suspicion that the judge was looking for reasons to disbelieve the evidence rather than to make proper findings on the totality of the evidence that was before her.
12. I am also concerned that the judge commented five times on the absence of corroboration. It is trite immigration law that corroboration is not necessary in asylum appeals. It is also equally trite that the absence of supportive evidence of the kind that might reasonably be expected is a perfectly proper matter for judicial comment and can assist decision making. If the judge had said that certain evidence was unsupported and it was reasonable to think it would be supported if it were reliable then she may have made a good point, but the repeated use of the word “corroboration” again leaves one wondering quite where the judge’s focus lay.
13. Cumulatively, I have no hesitation in saying this is an unsatisfactory determination. It is wobbly in many places and plain wrong in others and I set it aside. The appellant has not had a proper hearing. I set aside the decision of the First-tier Tribunal and I direct that the case is heard again in the First-tier tribunal.

### **Notice of Decision**

The appeal is allowed. I set aside the decision of the First-tier Tribunal and I direct that the appeal be heard again in the First-tier Tribunal.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal




---

Dated 12 July 2017

