



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01263/2016

THE IMMIGRATION ACTS

Heard at Field House
On 18 June 2018

Decision & Reasons Promulgated
On 26 June 2018

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

FORID MIAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L. Profumo, Counsel

For the Respondents: Mr P. Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Although an anonymity order was made in the First-tier Tribunal, I am not satisfied that there is any longer the need for such an order.

2. The appellant is a citizen of Bangladesh, born in 1986. He came to the UK as a visitor in 2011 or 2012 (per the appellant's witness statement dated 12 August 2015 or his asylum interview, respectively). The respondent's case is that it was 2012. He claimed asylum on 3 August 2015.
3. His claim was refused and his appeal against that decision came before First-tier Tribunal Judge A.M. Black ("the FtJ") on 5 June 2017 following which she dismissed the appeal.
4. The basis of the appellant's claim is that he is an Ahmadi Muslim who was active in the faith before coming to the UK, including in campaigning for the rights of the faith. On 18 June 2009 he was distributing leaflets in Bangladesh when he and others were attacked by Jamaat-e-Islami and then arrested by the police. He was detained and tortured. He was charged with an offence. He was released on bail on 24 June and taken to hospital where he remained until 28 June. In hospital he was treated for an injury to his right leg and for a fractured skull. He was re-admitted because of an infection and remained in hospital between 2 and 4 July 2009.
5. He left Bangladesh because he feared persecution by Jamaat-e-Islami and the Bangladeshi authorities, meaning that he cannot return.
6. As a result of being tortured in detention he is said to be suffering from mental health problems.

The grounds and submissions

7. The grounds of appeal in relation to the FtJ's decision, to summarise, contend that the FtJ failed to give clear or adequate reasons for rejecting documentary evidence including an FIR (First Information Report), charge sheet and arrest warrant. She had said that the documents were not "wholly reliable", which was not clear as to what was meant.
8. Although she had referred to false documents being readily available in Bangladesh, the background report which it appears that the FtJ was referring to does not itself refer to court documents. The Canadian Immigration Report was not a sufficient basis for rejecting the documentary evidence and concern had been expressed in a case cited in the grounds as *Chinder Singh* (G0055) (sic) in relation to the partiality of the employees of the Canadian authorities, including its immigration service. It is asserted that the FtJ had failed to give anxious scrutiny to the appellant's documents and her reasoning was based on "conjecture and speculation".
9. It is next asserted in the grounds that the FtJ had failed to give the medical report from a consultant psychiatrist adequate weight and failed to provide adequate reasons in relation to her assessment of it. The report by a Dr Srikumar concluded that the appellant was suffering from, inter alia, severe PTSD, including problems with his memory. It is asserted that the FtJ provided "very subjective reasoning" in concluding that the report should not be given very much weight.

10. In relation to background evidence, the grounds contend that the FtJ had failed to take it into account. Any references to background conditions were generic. She should have considered the credibility of the claim against that background evidence.
11. In her very able submissions Ms Profumo relied on those grounds. In relation to the medical (psychiatric) evidence it was submitted that one was able to see in the report the doctor's methodology and the process by which he arrived at his diagnosis.
12. Although the appellant had provided a detailed witness statement, the means by which it was created, over 12 or 13 visits to the solicitor, was explained on behalf of the appellant. The fact of there being a detailed witness statement did not therefore undermine that aspect of the claim that relied on the appellant's memory problems. In his asylum interview he had been unable to remember most things.
13. In any event, the FtJ had accepted the fact of the underlying medical condition and the hospital discharge notes.
14. It was submitted that there was an inadequate consideration of the documentary evidence. At [44] the FtJ had said that the documentary evidence was not "wholly reliable" but that was only based on the background evidence of the availability of false documents. The analysis of the documentary evidence that there was, was insufficient. Further, what the FtJ said at [44] in terms of the documentary evidence not being reliable was inconsistent with the conclusion at [50] about the documents being unreliable.
15. As to the background evidence, the FtJ needed to have considered theoretical credibility against that background evidence which supported the appellant's claim to fear persecution on return, and his claim of past events.
16. In his submissions Mr Duffy referred to various aspects of the FtJ's decision in support of the contention that her reasons were legally adequate. The ground in relation to the medical evidence amounted only to a disagreement with the FtJ's decision. Likewise the second ground in relation to the documentary evidence. Her reasons were not based simply on the fact that false documents can be obtained in Bangladesh but on the various discrepancies in them. There was no inconsistency in her conclusions.
17. Furthermore, she had been entitled to take into account the appellant's delay in claiming asylum. In relation to the background evidence, the FtJ did not say that there was any inherent implausibility in the claim.
18. In reply, Ms Profumo said that it was not argued that the FtJ had not considered the psychiatric report but that her reasons for not attributing any weight to it were not sufficient. It was not open to her to find that the witness statement was inconsistent with the claimed inability to remember. Little consideration was given to the fact that the appellant's cousin brought the documents from Bangladesh, and the fax from the attorney there.

Assessment and Conclusions

19. The FtJ gave a comprehensive summary of the respective parties' cases and identified the documentary evidence that was before her. It was accepted on behalf of the respondent before her that the appellant was suffering from "mental health issues" but the respondent did not concede the causes or the extent of those conditions.
20. The FtJ referred to the Joint Presidential Guidance Note of 2010 in relation to vulnerable persons. The appellant did not give oral evidence before the FtJ and at [5] the arrangements for the conduct of the hearing are set out. The FtJ noted in that paragraph that the appellant did not appear to engage with the hearing at all. She heard oral evidence from a Mr Nozmul Islam, his cousin.
21. Between [25] and [34] there is an appraisal of the medical evidence in the report of Dr Srikumar. The FtJ noted his background and expertise and that he had been treating the appellant since August 2014 following a referral from his GP. She also observed however, that the report does not contain a statement of truth as it should and nor did it contain a statement acknowledging the author's duty to the Tribunal, a matter that the FtJ said was particularly relevant given his role as the appellant's treating psychiatrist. She also concluded that his methodology was not patent on the face of the report, contrary to *PP (female headed household; expert duties) Sri Lanka* [2017] UKUT 117 (IAC).
22. In terms of the FtJ's preliminary observations about the report, the FtJ was in my view correct to point out those deficiencies, in particular about the statement of truth and the acknowledgement of the duty to the court. Further the methodology is not patent on the face of the report with reference to any diagnostic criteria. It states that the report is based on his personal knowledge of the appellant since the time that he had seen him, the GP's notes and a recent assessment with the assistance of an interpreter to prepare the report but the diagnosis of PTSD with psychotic features is not made with reference to any of the recognised psychiatric diagnostic criteria.
23. Furthermore, as the FtJ said at [28] after quoting from the report, there is no explanation or reasoning for the diagnosis and that the appellant's symptoms appear to have been taken at face value as narrated by his cousin, Mr Islam, from whom the history was obtained. She also noted that there was no consideration given as to whether the claimed symptoms had been fabricated or embellished.
24. The FtJ had noted at [27] that the source of information as to the appellant's condition was largely provided by the appellant's cousin since the appellant hardly responded to questions even with the assistance of his cousin and the interpreter that was present at the examination(s). She also noted that there is no reference in the report to the appellant's medical history in Bangladesh or his state of mind in 2009 at the time of his arrest or at the time of his departure for the UK in 2012.
25. In the same paragraph the FtJ observed that the psychiatrist said that the psychological treatment approach was not possible due to the appellant's lack of engagement, but he

had not said what approach was taken instead. Noting that Dr Srikumar appeared to rely principally on his observation of the appellant and what he had been told by the appellant (limited though that may have been) and by Mr Islam, she said by way of example as to those facts being relevant, that none of the medical evidence (GP's records or Dr Srikumar himself) referred to having seen the appellant shouting as narrated by Mr Islam.

26. At [29] she said that the conclusion of Dr Srikumar as to the cause, effect and existence of poor memory does not "sit well" with the ability of the appellant to provide a detailed statement in support of the claim which he signed on 12 August 2015. Similarly, that it did not sit well with his ability to have provided an even more detailed statement (unsigned), much of it in the form of submissions, and according to the evidence of Mr Islam prepared over 12-14 visits to his solicitors.
27. It is not the case, as impliedly suggested on behalf of the appellant in submissions, that the FtJ did not take into account the evidence as to how the statement was obtained in terms of the number of visits to the solicitors. She did take it into account but obviously did not find it persuasive for the reasons that she gave at [47] and [48] and to which I make further reference below.
28. Next the FtJ noted that it was said in the psychiatric report that the appellant lacked the capacity to understand court proceedings, including the process of the asylum interview due to his abnormal mental state. However, she said that there was no indication from the asylum interview record that the appellant did not understand or participate in the asylum interview. She said that he appeared both to have understand and responded but said that he could not recall certain matters which showed that he was participating in the interview and understand what was expected of him.
29. In the light of that comprehensive assessment of the report by the FtJ, set within the context of the appellant's claim, I am satisfied that she was entitled to find that the report was "not helpful", for the reasons she summarised at [31].
30. That conclusion in relation to Dr Srikumar's report is reinforced by what the FtJ said at [32] in relation to the report not addressing the fact of a lack of (adverse) mental health symptoms in 2013 when the appellant consulted his GP (the background of his visits having been summarised by the FtJ).
31. Further, in relation to the involvement of Mr Islam and his evidence, the FtJ noted again that it was he who gave Dr Srikumar a description of the appellant's background at the first consultation in August 2014. Mr Islam said in evidence that he gave snippets of information given by the appellant, to the appellant's solicitors to enable a detailed appeal statement to be prepared and he was present at some meetings between the appellant and the solicitors. He also accompanied the appellant to his GP. Thus it was clear that he has had considerable involvement in the appellant's asylum claim and appeal. She accepted that a degree of involvement is appropriate given the support he had provided to the appellant since his arrival and because the appellant does not speak English, but the level of Mr Islam's input was, she said, relevant to her

assessment of his evidence. She was entitled to take those matters into account, and indeed the grounds do not take issue with that distinct aspect of the FtJ's decision.

32. The FtJ went on to refer to matters that are in the GP's records but which do not feature in the appellant's asylum claim, for example claims of being a supporter of the opposition party and hence possibly having sustained a politically-related beating; and that a case is still pending in the courts in Bangladesh. However, the FtJ pointed out that the appellant's claim in the screening and asylum interviews was that he was beaten by the police for his Ahmadi faith. The FtJ then quoted in detail from a GP's note of 11 August 2014, noting that it stated that the appellant has clear memories of his time in Bangladesh in terms of the problems he experienced, which was inconsistent with what he said in interview about difficulty remembering. The FtJ again referred here to Dr Srikumar's report giving no indication as to when the memory loss became apparent.
33. Likewise, the FtJ said that there was no explanation in the report of Dr Srikumar for the fact that the appellant was apparently behaving normally in 2013, and even able to work as a chef, yet started behaving irrationally the following year such that he was diagnosed with PTSD.
34. That further analysis of the medical evidence, and with further reference to the report of Dr Srikumar, provided additional reasons for the FtJ's conclusion that his report was to be afforded little weight.
35. From [44] the FtJ considered what she described as "the police and court documents". It is not the case that she rejected those documents simply on the basis of what was said in background evidence about the ready availability of false documents in Bangladesh, although that was a matter that she referred to.
36. She noted at [44] that the documents were adduced to support the asylum claim and that most of them would have been available to him when he left, noting also that he claims to have come to the UK to flee persecution. She said that he had instructed an advocate in Bangladesh when he was there but it was not clear as to why he did not bring the documents with him if they existed at that time. She pointed out that the documents would have demonstrated that he was wanted by the police and she explained why he would have had time to have obtained them, not having left Bangladesh until a month after his visa was issued.
37. She noted discrepancies in the documents, including in relation to the appellant being said to have been present in Bangladesh on certain dates but by which time he was in the UK. A document described as the Ehajar referred to the appellant being the leader in the commission of the offence yet that was not the appellant's evidence. The appellant said that he was charged on 19 June 2009 but the charge sheet was not signed by the officer in charge until 20 September 2009. She noted that this was not a situation where the appellant's solicitors had corresponded with the advocate in Bangladesh in order to obtain the documents.

38. In concluding at [44] the FtJ said that she was not satisfied that the documents were “wholly reliable” but that she took them into account “in the round with the remaining evidence”.
39. An aspect of that other evidence was Mr Islam’s evidence that during his visit to Bangladesh the police visited the appellant’s home to get information on his whereabouts and threatened his family to persuade him to surrender. The FtJ noted that there was no evidence from members of the appellant’s household to support that aspect of the claim, and nor was it clear that Mr Islam was actually present during what are said to have been visits by the police.
40. The FtJ also referred to inconsistency in relation to the name of the advocate in Bangladesh as between the evidence of the appellant’s cousin and the documentary evidence.
41. She had already referred at [44] to the timing of the appellant’s asylum claim, noting that he claimed asylum after having been in the UK for some three years and having worked as a chef without permission.
42. There was then further consideration of other aspects of the evidence in terms of how the appellant’s witness statement was taken and the appellant’s observance of his faith in the UK. At [50] the FtJ stated that she took into account the appellant’s mental health when assessing his evidence, made reference to the discrepancies she found in the documentary evidence, in the evidence of Mr Islam and the timing of the asylum claim. She concluded that part of her decision by stating that with the exception of the handwritten hospital discharge notes she was satisfied that the documents provided by the appellant were unreliable.
43. I am not satisfied that there is any inconsistency between what the FtJ said at [44] about the documents not being “wholly reliable” and her conclusion at [50] that they were unreliable. The assessment at [44] was seemingly in the way of a preliminary assessment pending further consideration of the evidence, and the evidence in the round, with the FtJ expressly referring to the need to appraise the documents in that context.
44. As to the reasons for considering that the evidence in relation to how the appellant’s appeal statement was obtained was lacking in credibility, at [47] the FtJ described the evidence on that issue as “vague and implausible”. She set out the evidence that she was given in that respect. She referred to Mr Islam’s denial that the statement had been put together for the appellant and that he was asked about the fact that the statement is written in English but there was no evidence that it was read back to the appellant in Bengali. She noted Mr Islam’s answer to that point in terms of the solicitor who spoke Bengali telling the appellant what the statement “was about”.
45. She referred to the appellant’s statement as being extremely detailed, even including dates and other details relating to events over five years ago, and that it amounted to submissions in parts in response to the refusal letter, and referring to background

evidence in detail. She concluded that its quality and content was not compatible with the opinion of Dr Srikumar that the appellant was not able to give oral evidence or to participate in the proceedings, stating that she questioned the extent to which “this evidence” (the appellant’s evidence) can be relied on and indeed who drafted the statement.

46. The FtJ then referred to the lack of supporting evidence in relation to the appellant’s claimed Ahmadi faith, later concluding that he had not established that he was of that faith.
47. It is true that she did not refer in detail to the background evidence that was before her, although as I have indicated she did cite it as part of the evidence provided in support of the appeal. She also noted at [8] the respondent’s country information in relation to minority religious groups in Bangladesh. She referred at [20] to the grounds of appeal which themselves said that the background material did not suggest that there was persecution *per se* of Ahmadis.
48. The FtJ did not reject the appellant’s claim because of any finding that it was not a claim that was consistent with country background material. Nothing in her decision suggests that she considered his account of past persecution or claimed fear or persecution on return to be inconsistent with the situation for Ahmadis in Bangladesh. I accept that the FtJ’s decision would have benefited from at least a summary of the background evidence that was relied on but I am not satisfied that there is any error of law in her having failed to have done so, or that any error of law that there is in that respect is material.
49. To summarise, I am not satisfied that there is any error of law in the FtJ’s decision in any of the respects contended for, or that any error of law that there is in terms of a lack of express reference to background evidence is material. Accordingly, the decision to dismiss the appeal is to stand.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal therefore stands.

Upper Tribunal Judge Kopieczek

22/06/2018