



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

Appeal Number: PA/02363/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1<sup>st</sup> November 2018**

**Decision & Reasons  
Promulgated  
12<sup>th</sup> November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

**[S A]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Mahmood, Counsel

For the Respondent: Ms J Isherwood, Senior HOPO

**DECISION AND REASONS**

1. The Appellant, a citizen of Bangladesh (born 11<sup>th</sup> October 1980), appeals with permission against the decision of the First-tier Tribunal (Judge H Clark) dismissing his appeal against the Secretary of State's decision of 6<sup>th</sup> February 2018 refusing his protection claim.
2. The basis of the Appellant's claim to protection is that he fears to return to Bangladesh due to his political activity as a member of the Bangladesh National Party (BNP) which opposes the ruling Awami League Party. He claims that he would be arrested and detained on return to Bangladesh as

a result of politically motivated prosecution and further his political activity whilst in the UK would also expose him to risk.

3. The Respondent, whilst accepting that the Appellant is a Bangladesh national, rejected his claimed membership of the BNP and related political affiliations. The Appellant appealed that decision.
4. In a well-constructed decision, the FtTJ considered the documentary evidence and noted that it included arrest warrants, letters of support and photographs. The Appellant's oral evidence was noted and consideration was given to a Section 8 issue. There was an eight year delay, from the Appellant first entering the UK in 2009 to August 2017 when his claim to asylum was made.
5. The judge noted in particular the Appellant's poor immigration history - he had submitted a false passport to the UK authorities in 2011 to support an application for naturalisation.
6. In assessing the Appellant's credibility the FtTJ noted inconsistencies in his various accounts. He disbelieved the explanation given for failure to claim asylum promptly on arrival in the UK. Findings were made that the documentary evidence in support of the claim was unreliable. Reasons were given for this. On reviewing the evidence as a whole the judge dismissed the appeal.

### **Onward Appeal**

7. Permission to appeal the FtTJ's decision was refused initially in the First-tier Tribunal. It was noted that the grounds seeking permission took issue with the FtTJ's findings, asserting amongst other things that appropriate weight had not been attached to the documentary evidence, and there was a lack of clarity on whether a finding had been made concerning the Appellant's membership of the BNP. It was also asserted in the grounds that the FtTJ incorrectly applied paragraph 399L of the Rules in that the Appellant's reasons for his late claim to asylum were credible and should have been accepted. Finally it was asserted that the Article 8 ECHR assessment was flawed as the FtTJ had given "insufficient weight" to whether there were "exceptional circumstances" in relation to a return to Bangladesh.
8. As outlined above permission to appeal was refused by the FtT. However it was granted on a renewed application by the Upper Tribunal. The grant of permission reads as follows.

"I believe that:

- a. by dealing first with Section 8 issues before considering the credibility of the claim; and
- b. failing to make a finding on whether or not the appellant was a member of BNP;

the First-tier Tribunal Judge may erred in law (sic)."

Thus the matter comes before me to determine whether the decision of the First-tier Tribunal contains such error of law that it needs to be set aside and remade.”

### **Error of Law Hearing**

9. Before me Mr Mahmood appeared on behalf of the Appellant and Ms Isherwood for the Respondent. I heard submissions from both parties. Mr Mahmood began his submissions by handing up two cases, **SM v Secretary of State for the Home Department [2005] UKAIT 00116** and **RT (Zimbabwe) v Secretary of State for the Home Department [2012] UKSC 38**.
10. The main thrust of his submissions relied on the two matters set out in the grant of permission. He said firstly that the FtT’s decision was improperly constructed in that the FtT had impermissibly started his consideration of the Appellant’s credibility by looking at the Section 8 issue first and making findings on that matter before considering the rest of the case. Therefore he had failed to look at the evidence holistically because a Section 8 issue had been used as the starting point in the credibility assessment.
11. The second strand to Mr Mahmood’s submissions centred on an assertion that the FtT had erred by failing to make an appropriate finding on whether or not the Appellant was a member of the BNP. He drew my attention to the documentary evidence which had been submitted in support of the Appellant’s claim and said that the FtT had erroneously failed to attach appropriate weight to those documents. In turn this failure had meant that the FtT had failed to consider the Appellant’s position in the BNP and thus failed to consider whether there was a risk on return to Bangladesh.
12. Ms Isherwood defended the decision briefly but robustly. She drew particular attention to [47] and [48]. In [47] the judge says the following, “I do not consider it reasonably likely that the appellant was active or prominent the BNP (sic) as he claims, or that he was attacked by Awami League supporters in 2005, or that he faces arrest or prosecution in Bangladesh as a result of two politically motivated cases.”
13. Ms Isherwood continued that in [48] the judge deals with the evidence of diaspora activities and gives full reasons for finding that the Appellant is not at risk on return. The grounds amount to no more than a disagreement with the FtT’s clear and reasoned findings.
14. At the end of submissions I announced my decision that I was satisfied that there was no error on the part of the FtT and I now give my reasons for this finding.

### **Consideration**

15. I find that this application is without merit. It is abundantly clear from a reading of the decision as a whole that the FtTJ comprehensively disbelieved the Appellant's claim to be at risk on return to Bangladesh. In a careful and well-constructed decision the FtTJ spends several lengthy paragraphs setting out his reasons for so finding.
16. It is correct to say that the FtTJ starts his credibility analysis by looking at the Section 8 issue. However I find that this is not a case where the judge has made a decision by reference to the Section 8 issue only and thus closed his mind to the other available evidence available. It seems to me appropriate that he starts with the Section 8 issue. The reason for this is that the appellant took eight years before making a claim to asylum. Part of the Appellant's case is that he was unaware of the system and did not have the opportunity to tell the Respondent about his asylum claim. Significantly a deal of the evidence put forward to support his claim referred to events that occurred during this eight-year period. The judge had to deal with this evidence and it therefore makes sense that the Section 8 issue was dealt with initially. It is clear that the Section 8 issue is interwoven with the evidence of the claim as a whole. I find that this is not a case where the FtTJ has failed to look at the evidence holistically. On the contrary the entirety of the evidence has been considered with care.
17. So far as the second point in the grant is concerned, [47] makes it perfectly clear that the judge assessed the risk on return to this Appellant by reference to the evidence as a whole. In [47] and [48] the judge sets out that there are a number of documents from various sources which purport to corroborate the Appellant's claim. The judge deals with those documents on the basis that this is an Appellant who submitted a false passport in the UK, in order to make an application for naturalisation. The FtTJ was perfectly at liberty to place no reliance on the documents which the Appellant had sent to support his claim. As Ms Isherwood pointed out, he then said the following:

"I do not consider it is reasonably likely that the appellant was active or prominent the BNP (sic) as he claims, or that he was attacked by Awami League Supporters in 2005, or that he faces arrest or prosecution in Bangladesh as a result of two politically motivated cases. The timing of the appellant's claim for asylum suggests that the appellant was making an attempt to remain in the UK when other means to do so had failed."
18. I find that the reader can be left in no doubt that the judge disbelieved the Appellant's core claim and thus assessed that there was no real risk on return to Bangladesh.
19. I find that the grounds seeking permission and the application before me amount to no more than a disagreement with the comprehensive decision made by the FtTJ. It follows therefore that the decision contains no error requiring it to be set aside and that this appeal therefore fails.

**Notice of Decision**

The appeal of the Appellant against the decision of the First-tier Tribunal is dismissed. The decision of the First-tier Tribunal dismissing the Appellant's appeal against the Respondent's refusal to grant his protection claim therefore stands.

No anonymity direction is made. I was not asked to make one, and I find it is not necessary.

Signed  
2018

C E Roberts

Date

05 November

Deputy Upper Tribunal Judge Roberts