



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03006/2018

THE IMMIGRATION ACTS

Heard at Field House
On 18 September 2018

Decision and Reasons Promulgated
On 21 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

IHC
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan of Universal Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. To preserve the anonymity direction deemed necessary by the First-tier Tribunal, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Watson promulgated on 24/04/2018, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 10/11/1984 and is a national of Bangladesh. The appellant entered the UK on 19/03/2010 and made a protection claim on 22/11/2016. On 16/02/2018 the Secretary of State refused the Appellant's application.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Watson ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 17/07/2018 Upper Tribunal Judge Lindsley gave permission to appeal stating, inter alia

3. The grounds of appeal contend, in summary, that the First-tier Tribunal failed to have regard to material evidence; made irrational findings on material matters; and failed to give adequate reasons for material findings.

4. This is said to be the case because all documents were found to be fraudulent without reference to the Home Office fact-finding mission report September 2017 which finds that it is not easy to obtain forged police and court documents and in a context where all of the documents were properly sealed by the District and Sessions Judge from Sylhet, and where the description of the cases was consistent with the appellant's statement and interview notes. Even if there were similar papers in another asylum matter before the same court this could be because there were five accused in the case. Further at paragraph 27 the First-tier Tribunal erred by finding that the appellant would not be able to leave Bangladesh if he had a case against him, when the Home Office fact-finding mission report found that this was possible in 99% of cases. There was a failure to consider the evidence from Shibir Sylhet City Unit when concluding the appellant had not shown he was politically active in Bangladesh at paragraph 28 of the decision. There was also a failure to consider the photographic evidence and evidence from Save Bangladesh which showed the appellant was politically active in the UK. There was also a failure to consider the reasons set out in the witness statement as to why the appellant had delayed in claiming asylum.

5. The grounds are arguable, particularly those referring to the Home Office fact-finding mission report of September 2017.

The Hearing

5. (a) Mr Khan for the appellant moved the grounds of appeal. He focused on [27] to [28] of the decision. At [27] the Judge deals with credibility. He told me that the Judge's credibility assessment is flawed because the Judge did not place weight on politically motivated cases brought against the appellant. He told me that the Judge's findings in relation to documents produced by the appellant are contradicted by para 4.6.1 of the respondent's own fact-finding mission report 2017.

(b) Mr Khan told me that the Judge's treatment of documentary evidence is flawed. He took me to [14] and [28] of the decision and told me that the background materials indicate that, because there are stamps and counter signatures on the documents produced, the documents are not likely to be forgeries.

(c) At [27] the Judge found that the appellant is not a credible because he did not encounter difficulty leaving Bangladesh. Mr Khan referred me to the respondent's fact-finding mission report 2017 which indicates that 99% of travellers leave Bangladesh without difficulty, whether or not a prosecution is pending.

(d) Between paragraphs [26] and [28] of the appellant's witness statement the appellant explains why he did not claim asylum until November 2016, even though he arrived in the UK in March 2010. Mr Khan told me that the Judge failed to take account of that explanation. Mr Khan told me that the Judge's credibility assessment is undermined by the background materials and his failure to make findings on material matters. He told me that the Judge had failed to take account of newspaper reports found at pages 19 and 20 of the appellant's bundle and does not consider the medical certificate from a hospital at page 22 of the appellant's bundle. He told me that the Judge did not consider photographic evidence between pages 71 and 74 the appellant's bundle.

(e) Mr Khan asked me to set the Judge's decision aside.

6.(a) For the respondent, Ms Everett told me that the decision does not contain a material error of law. She told me that the Judge considers all of the documentary evidence provided and wrote a perfectly well reasoned decision explaining why he attaches little weight to the documents. She told me that the Judge clearly followed the principles set out in Tanveer Ahmed

(b) Ms Everett (very fairly) told me that the Judge is probably wrong to find at [27] that because the appellant was subject to bail conditions he would have difficulty leaving Bangladesh, but she told me that the error does not amount to a material error of law.

(c) Ms Everett expressed concerns that the Judge mentions that there are similarities between the documents produced by the appellant and the documents he has seen in another case file but reminded me that the Judge says that he sets that consideration aside.

(d) Ms Everett asked me to dismiss the appeal and allow the decision to stand.

Analysis

7. At [14] the Judge narrates a preliminary issue. He says that some of the documentary evidence produced by the appellant is similar to documentary evidence in a separate case file. What the Judge does at [14] is record a discussion which he had with parties' agents before evidence commenced at the hearing. He concludes [14] by declaring that the documentary evidence would be considered in the round and in the context of this particular appellant's case.

8. At [14] the Judge records the preliminary discussion with parties' agents. He does so in the interest of demonstrable fairness. Between [15] and [24] the Judge discusses the documentary evidence. A fair reading of the entire decision makes it clear that the Judge does not carry out a comparison of the documents relied on by the appellant with documents produced in a separate case file. A fair reading of the entire decision makes it clear that the comments at [14] are not part of the decision-making process and neither influence nor inform the Judge's decision.

9. The thrust of the grounds of appeal is that the Judge's credibility assessment at [27] & [28] is wrong because the respondent's fact-finding mission 2017 has passages which appear to contradict the Judge's findings.

10. At [27] the Judge clearly followed the guidance given in Tanveer Ahmed. He found that the appellant did not establish that the documentary evidence can be relied on. The Judge reached that decision because he finds that the core aspects of the appellant's account is fabricated. He then goes on to give clear reasons for finding that the appellant has lied. The reasons do not solely relate to the documents. The Judge does not say that the documents are forgeries. He says that the appellant has not demonstrated that the documents could be relied upon.

11. 4.6.1 of the respondent's fact-finding mission report says

One source noted that forged or fraudulent police and court documents are not easily obtainable, because of counter signatures processes and the fact that all documents can be checked against a database.

12. The fact-finding mission report does not say that documents which bear to be police or court documents must be relied on because they contain stamps and signatures. The report says that forged or fraudulent police and court documents are not easily obtainable. That clearly means that it is possible to obtain forged or fraudulent police and court documents, just that is not necessarily easy to get them. In PJ (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 1011 it was held that in asylum claims, where local lawyers obtained documents from courts in the home country, that did not create a rebuttable presumption that the documents were reliable.

13. The Judge does not make a finding that the documents were forged or fraudulent. He makes a straightforward finding that the appellant does not demonstrate that the documents can be relied on, and then gives his reasons. The reasons that the Judge gives demonstrate that the Judge took a holistic approach to the totality of evidence before making his credibility findings.

14. The Judge makes an error of fact in both [27] and [28]. His conclusion that the existence of an arrest warrant & bail conditions create difficulty leaving Bangladesh is factually incorrect, but when those findings are treated as *pro non scripto*, the decision still makes sense and is still adequately reasoned.

15. It was argued that the Judge failed to take account of a newspaper report and a sequence of photographs. The Judge refers to the newspaper report at [16], and refers to the photographs at [31]. The Judge manifestly considered each strand of evidence.

16. The appellant delayed in claiming asylum. In his witness statement the appellant sets out an explanation for the delay in claiming asylum. The Judge sets out a chronology [13]. At [30] the Judge finds that because the appellant did not make his asylum claim at the earliest opportunity his credibility is damaged. The Judge is

obliged to make that finding because of section 8 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004.

17. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

18. In MD (Turkey) v SSHD [2017] EWCA Civ 1958 it was said that adequacy meant no more nor less than that. It was not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why she has lost and it is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case there has been an error of approach.

19. A fair reading of the decision demonstrates that the Judge took account of each strand of evidence. The Judge considered the background materials as part of a holistic assessment of all of the evidence. There is nothing wrong with the Judge's fact-finding exercise. In reality the appellant's appeal amounts to little more than a disagreement with the way the Judge has applied the facts as he found them to be. The appellant might not like the conclusion that the Judge arrived at, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

20. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

21. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 24 April 2018, stands.

Signed

Date 20 September 2018

A handwritten signature in dark ink, appearing to read 'Paul Doyle', written in a cursive style.

Deputy Upper Tribunal Judge Doyle