



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04262/2017

THE IMMIGRATION ACTS

Heard at Field House
On 21 June 2018

Decision & Reasons Promulgated
On 26 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

M E R E
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Masood, Counsel instructed by Law Dale Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Cohen promulgated on 19 February 2018. I am grateful for focussed and detailed manner in which both representatives have advanced their respective cases before me.

2. This is an asylum claim brought by the appellant and concerns (i) his alleged political involvement in Bangladesh, and (ii) a property dispute which had significant adverse consequences for him and his family.
3. The principal ground upon which permission to appeal was granted concerned the First-tier Tribunal Judge's assessment of the appellant's credibility. The judge concluded at paragraph [52] "that the appellant has fabricated his asylum claim in its entirety".
4. It is submitted on the appellant's behalf that the judge's approach to the documentary evidence was flawed and there was a misdirection on a significant matter of fact concerning whether the appellant approached the authorities to claim asylum or whether asylum was only claimed after the appellant had been encountered by immigration officers. This misapprehension, it is said, had a bearing on the credibility findings.
5. When this matter was previously listed, the appellant was unrepresented and either by direction of the tribunal or of her own volition, Ms Holmes (then acting for the Secretary of State) produced a more detailed Rule 24 response dated 30 May 2018. Through no fault of the parties, it had not found its way onto the file. Ms Holmes concedes, entirely properly, that the judge does not appear to have followed the approach commended in Tanveer Ahmed [2002] Imm AR 318.
6. The judge made express reference to the case in paragraph [40], but regrettably did not adopt the holistic approach whereby the decision maker should look at the evidence as a whole or in the round. Paragraph [40] concludes as follows:-

"I find the appellant to be lacking in credibility and in the light of this finding attach very limited weight to the documentation produced by the appellant including from the police, courts, local branch/student branch of his party and newspapers in Bangladesh."
7. The judge did not differentiate between the documentation dealing with the property dispute and that which dealt with the appellant's claimed political activities. They addressed entirely different matters and merited separate treatment.
8. Mr Wilding, who has argued the Secretary of State's case with tenacity, rightly says that the expression "lacking in credibility" within paragraph [40] incorporates by reference the specific adverse findings at paragraphs [35], [36], [37], [38], [45] and elsewhere. Whilst the judge gives indications as to particular matters which are said to be damaging, he does not deal in express terms with an overall credibility finding, addressing the totality of the evidence, including oral testimony, witness statements and contemporaneous documentation.
9. Mr Wilding has sought to sew together those various references and flesh them out in such a way as might provide a sound foundation for an adverse credibility finding.

But the decision itself fails to reveal what may have been in the judge's mind at the time. The reader is not informed of how the judge set about the task prescribed in **Tanveer Ahmed**.

10. Every appellant, but perhaps particularly one in an asylum case, is entitled to know, however briefly, the precise basis upon which his claim has been won or lost. Regrettably, in an otherwise detailed judgment the issues of credibility were not properly dealt with.
11. I therefore find an error of law and set aside the decision. The matter will be remitted to the First-tier Tribunal to be heard afresh by a judge other than Judge Cohen.
12. This is dispositive of the appeal, and it is therefore unnecessary for me to deal with the remaining grounds. I merely observe that the appellant and his family must understand that it is perfectly open to the First-tier Tribunal to reach exactly the same decision as did Judge Cohen notwithstanding the adoption of the correct approach in assessing credibility and the weight to be afforded to documentation.

Notice of Decision and Directions

- (1) The appeal is allowed and the decision of the First-tier Tribunal is set aside.
- (2) The matter is remitted to the First-tier Tribunal to be heard afresh by a judge other than Judge Cohen.
- (3) No findings of fact are preserved.
- (4) A Sylheti interpreter will be required.

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

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

Signed *Mark Hill*

Date 25 June 2018

Deputy Upper Tribunal Judge Hill QC