



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

Appeal Number: PA/04292/2017

THE IMMIGRATION ACTS

**Heard at Field House
Promulgated
On 19.03.2018**

**Decision & Reasons
On 26.03.2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**AA (BANGLADESH)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:
Solicitors

Mr S. Chelvan, Counsel instructed by Chancery

For the Respondent:
Officer.

Ms A. Everett, Senior Home Office Presenting

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge NMK Lawrence sitting at Hatton Cross on 23 June 2017) dismissing his protection and human rights appeal against the decision of the Secretary of State to refuse to recognise him as a political refugee, or, in the alternative, to grant him leave to remain on private life grounds under Rule 276ADE (1)(vi).

The Reasons for the Grant of Permission to Appeal

2. On 21 December 2017 UTJ Southern granted permission to appeal for the following reasons:

The grounds raise a number of complaints including that the judge did not consider adequately the documentary evidence and the submissions based upon them. The judge has made comprehensive and robust adverse credibility findings but in so doing he said, at para 31, that the oral evidence was contradictory and inconsistent and:

“Since I find the oral evidence is wanting, in the most fundamental way. I find the documentary evidence does not point me in the opposite direction, towards credibility.”

There may be a discussion to be had about the impact of the full-stop that punctuates that phrase but, if correctly understood, the judge has reached a firm finding on credibility on the basis of his view of the oral evidence alone and then has considered the documentary evidence in the light of that adverse credibility finding, then it may be arguable that he failed to make his findings on the basis of the evidence as a whole.

The Hearing in the Upper Tribunal

3. At the hearing before me to determine whether an error of law was made out, Ms Everett conceded that the decision was erroneous and unsafe, and agreed with Mr Chelvan that the appeal should be remitted for a de novo hearing. The representatives also agreed the directions which are given below.

Discussion

4. The stance taken by Ms Everett was not determinative of the question whether an error of law was made out. I had to be satisfied that her concession was justified. I was so satisfied because the Judge failed to engage with a DVR concerning FIR No. 22 dated 28.01.16 which was relied on by the respondent as proving that not only were FIR No. 22 and an associated Charge Sheet both non-genuine documents, but so were other (unidentified) court documents.
5. I infer that the reason why the Judge did not engage with the respondent's positive case on forged/false documents was because he had refused at the outset of the hearing an application by Counsel for an adjournment so that the disputed documents could be authenticated by Dr Hoque. At [31] the Judge records Counsel as submitting in closing that if the adjournment had been granted, *“an expert's report could have been obtained to authenticate the documents.”* Since he had not allowed the appellant further time to obtain expert evidence which rebutted the DVR, the Judge may have decided to ignore the DVR in order to avoid a subsequent complaint of procedural unfairness.

6. Unfortunately, this engendered the scenario identified by UTJ Southern. The Judge appears to admit that he has reached a firm adverse credibility finding on the oral evidence alone, and that he has then simply discounted all of the documentary evidence in the light of his conclusion on the oral evidence. In order to ensure a fair hearing on the totality of the available evidence, the Judge needed to be seen to assess to what extent, if any, the police and court documents had internal credibility and independent probative value before reaching an overall conclusion on credibility.
7. There are other grounds of appeal, but the ground singled out by UTJ Southern has the most merit and I find that this ground is made out. The upshot is that the decision on the protection claim is unsafe, and must be set aside and remade. Since the protection claim requires to be heard de novo in the First-tier Tribunal, and since the alternative Article 8 claim will need to be assessed at the date of the hearing, the representatives were in agreement that there should be a complete re-hearing on all issues, with none of the findings of fact made by the previous Judge being preserved.
8. The background to the agreed directions is that Mr Chelvan, who did not appear below, raised in his skeleton argument two issues about the DVR, one of which “troubled” Ms Everett and has caused her to set in train an inquiry directed to the British High Commission (BHC) in Bangladesh. The two issues are:
 - (a) Whether the BHC complied with a general duty of confidentiality owed to the appellant when visiting the police station to verify the FIR and Charge Sheet or whether the BHC had revealed to the police officer that the appellant had made a protection claim in the UK based upon his accepted BNP membership, and had thus engendered a possible protection risk for the appellant – see **VT (Article 22 Procedures Directive - confidentiality) Sri Lanka [2017] UKUT 00368 (IAC)**;
 - (b) The rank of the police officer, and/or the steps taken to ascertain his reliability on the issue of the alleged non-existence of the FIR and Charge Sheet.
9. It was the **VT** point which troubled Ms Everett, as she was not in possession of any specific evidence to show that confidentiality had been preserved. However, on the basis of preliminary inquiries, she said that she was confident that the BHC would be able to provide evidence to show that the duty of confidence had not been breached.

Notice of Decision

10. The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and it must be remade.

Directions

11. The appeal is remitted to the First-tier Tribunal at Hatton Cross for a de novo hearing (Judge NKM Lawrence not compatible).
12. The appeal shall not be listed before 90 days have elapsed since the hearing at Field House on 19.03.18.
13. Within 42 days from 19.03.18, the respondent shall serve on the First-tier Tribunal and on the appellant's solicitors a detailed note on the procedures involved in the production of the DVR dated 28 December 2016 at Annex L, in the light of the guidance given by the Tribunal in **VT (Article 22 Procedures Directive - confidentiality) Sri Lanka [2017] UKUT 00368 (IAC)**.
14. The appellant shall be at liberty to file a written response within 42 days of receipt of the note and/or within 42 days after the time limit for the service of the note has expired.

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

Date: 22 March 2018

Judge Monson
Deputy Upper Tribunal Judge