



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/05110/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 19<sup>th</sup> October 2018

Decision & Reasons Promulgated  
On 20<sup>th</sup> November 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR P B  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: No attendance

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant was granted permission to appeal a decision of First-tier Tribunal Judge G A Black who in a decision of 2<sup>nd</sup> July 2018 dismissed his appeal. The grounds of appeal submitted that the judge had not followed a binding decision of a higher court, had overlooked important evidence and/or failed to ask for more evidence “by hearing with legal assistant (requested) where appellant not much understandable about legal terminology” (sic).

2. Further the judge had made a decision for which there was no evidence or not enough evidence and the matters had proceeded unfairly.
3. The grounds asserted

*“I believed failure to have regards to material evidence, taking into account and being influenced by immaterial evidence, inadequate reasons and unproved, unfair procedure, misunderstanding or misconstruction of the relevant fact and law without giving a chance for hearing/witness and without legal assistant unfair/injustice determination and lack of legal assistant (lawyer), disregarding a relevant statutory provision, failing to give effect to a binding decision of a Superior Court any irrationality (sic).”*
4. The grounds also added

*“I believed where most mistaken by Home Office Caseworker (official) have got audio record) and Home Office mistake could misleading the determination, judge failure to justify and not to give credit to the appellant account. Failing to take account baby best interest where she is born in UK and her age of 4½ years nearly attending in school.”*
5. Permission to appeal was granted on the basis that the grounds had been “without any mention of any specific errors relating to the actual appeal before the Tribunal”. It was noted that the appeal was a paper appeal and the judge’s conclusions were set out in short compass at paragraphs 7 and 8 and explained that the details of the claim were inconsistent and contained discrepancies.
6. However, the permission added that there was no mention of Article 8 in the decision nor any mention of Section 55 of the Borders, Citizenship and Immigration Act 2009. Nor was there any conclusion on whether there had been interference with family or private life or any mention of the balancing exercise undertaken in regard to proportionality.
7. The Secretary of State filed a Rule 24 response on 20<sup>th</sup> September 2018 opposing the appellant’s appeal and stating that the First-tier Tribunal Judge had inter alia directed herself appropriately. It was a paper hearing and, on the evidence, which was provided the judge made findings which were open to her. The grounds had been settled by the appellant but were in essence a disagreement with the judge’s findings which referred to the discrepancies in the appellant’s asylum claim and gave sufficient reasons for making adverse credibility findings.
8. The grant of permission was triggered by the question of the best interests of the child but the appellant’s daughter was not a qualifying child. The judge does not refer to the Section 55 per se but it is concluded that it would be reasonable for her to move to Bangladesh.

9. As to a proportionality assessment it was evident on the factual matrix of the case that there would be no unjustifiably harsh consequences on the appellant and his dependants should they return.
10. Prior to the hearing the appellant requested that the hearing be held in private and that he wished for the Upper Tribunal to provide legal representation. It was pointed out that the Upper Tribunal could not provide legal representation which was available from a number of sources elsewhere and there was no apparent reason for a hearing in private but this could be raised at the hearing itself. It was an open matter for the appellant's wife as to whether she attended or not.
11. The appellant did not attend the hearing before me, but I am persuaded that the appellant had the date, time and hearing of the venue and had chosen not to make any further application for an adjournment or indeed submit any further evidence.
12. In conclusion, the grounds of application for permission to appeal go no way to undermining the decision of the First-tier Tribunal Judge and no specific error of law was identified with any examples from the evidence.
13. The judge specifically found that the appellant was a national from Bangladesh married and had a child born here in 2014. The judge noted that the appellant entered the UK as a student with leave in 2007 until February 2014. His application for leave to remain under family life was refused on 20<sup>th</sup> July 2015 but he did not claim asylum until 11<sup>th</sup> May 2016.
14. The appellant was married to a Bangladesh national and he and his partner had a child born in the UK.
15. The judge clearly found that the claim in relation to asylum related to a family matter and the appellant had not discharged the burden of proof even on the lower standard. The judge set out that she had read the letters in support from the appellant and the record of his asylum interview which set out details of his claim. She specifically stated that the details of the claim set out in the refusal letter were internally inconsistent and there were discrepancies in the dates of material events. Further the account given by the appellant was vague and confused (he claimed that he had received threats from a Bangladesh police officer and his sister-in-law to enter into an arranged marriage with her in an attempt to or ploy to receive the inheritance from his parents).
16. He feared returning to Bangladesh as the people involved were influential and he feared being killed. The judge found that the appellant claimed that he had been the subject of a complaint for sexual harassment from his "wife". However, in interview it was put to the appellant that the document produced related to a complaint of an offence for which he had been convicted under the Dowry Prohibition Act. The judge specifically rejected the appellant's account of the mistake (that it was the interpreter) and that the document produced

related to family matters not sexual harassment. The judge gave sound reasoning to the effect that the appellant would have read the documents that he relied on in his own asylum claim and therefore would have known their contents.

17. The further evidence was considered and his delay in his asylum claim from 2011 damaged his credibility under Section 8 of the Treatment of Claimants Act 2004.
18. The judge with respect to Article 8 set out that he could not meet the requirements of the family and private life and the appellant had failed to show that he met any of the parent or partner rules or that he met paragraph 276ADE. He had spent the majority of his life in Bangladesh and was educated and will be able to find work and reintegrate without much difficulty. Turning to the assessment of the child the judge did specifically state that the appellant's daughter was born in the UK and at school but was under the age of 4 (that is compulsory school age) and it was reasonable that she could move to Bangladesh with the appellant and his wife as a family unit. The child was clearly not a qualifying child. Their medical evidence took the case no further.
19. Bearing in mind the appellant was aware that the hearing was a paper hearing before the First-tier Tribunal it was open to him to submit evidence at that stage. It was also open to him to have an oral hearing which he chose not to do. There is no indication that the judge failed to take note of the relevant information before her.
20. On 12<sup>th</sup> September 2018 the appellant for the hearing before me submitted a further bundle attaching

*“some of additional extended FTT document, will be mentioned in bundle as extended FTT, like some case document paper as well which is filed against me in origin country which some of them wasn't before First-tier Tribunal because the original in English and some of other than English original was in Home Office which additional copy was not available to me to translate/was not available and from the origin of country complained.”*
21. There is no evidence that the judge failed to consider the evidence that was before her and any evidence that was not before her, such as that supplied by the appellant to the Upper Tribunal, cannot form the basis for criticism for lack of consideration.
22. The judge gave sound reasons for rejecting the asylum claim and having done so there was no reason and no evidence filed before the First-tier Tribunal to suggest that the appellant would experience very significant obstacles to his return to Bangladesh. This is in line with **Kaur, R (on the application of) v Secretary of State for the Home Department [2018] EWCA Civ 1423**. If, effectively, reliance is placed on mere assertion and evidence is not put forward

as to insurmountable obstacles (such as lack of ties abroad), the exacting test will not be met. Mere practical difficulty will not suffice [55].

23. It is not for the judge to search for the evidence to demonstrate very significant obstacles but for the appellant to provide information to the Tribunal which goes beyond mere assertion that there are difficulties on return.
24. The judge identified that the child was very young, had been born in the UK but was clearly of Bangladesh nationality, was not at school and it was reasonable for the child to relocate to Bangladesh with the child's parents. As set out in **KO (Nigeria) [2018] UKSC 53** at paragraph 18 it will normally be reasonable for a child to be with the parents. To that extent the record of the parents may become indirectly material. It should be noted that the child is not a qualifying child under paragraph 276ADE(1)(iv) or qualifying under Section 117B(6). Although this judgment was not published prior to the hearing before the First-tier Tribunal Judge it explains the law, and it is clear that the immigration history of the parents may become directly material if it leads to their ceasing to have a right to remain here and having to leave. In this case the parents had no right to remain in the UK and it was entirely open to the judge to conclude that if neither parent had the right to remain then that was the background against which the assessment was to be concluded. The judge did exactly that. There was an implicit consideration of the child's best interests and for these reasons there was no error of law in the decision and the decision shall stand.
25. As the Rule 24 response pointed out the appeal was essentially a disagreement with the findings of the judge.

### **Order**

The decision of First-tier Tribunal Judge Black shall stand. The appellant's appeal remains dismissed.

### **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 their 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           Helen Rimington

Date 15<sup>th</sup> November 2018

Upper Tribunal Judge Rimington