



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05466/2017

THE IMMIGRATION ACTS

Heard at Field House
On 3 July 2018

Decision & Reasons Promulgated
On 07 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MOHAMMED [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Waheed, counsel instructed by City Heights Solicitors

For the Respondent: Mr C Howells, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Bangladesh, date of birth 10 February 1989, appealed against a decision of the Secretary of State made on 24 May 2017. His appeal came before First-tier Tribunal Judge Lucas (the Judge) who, on 14 December 2017, promulgated his decision [D].

2. Permission to appeal was given by Upper Tribunal Judge Plimmer on 27 March 2018. The grounds, in short, are these: First, that the Judge had erroneously taken into account part of the immigration history at a time when the Appellant was under the age of 18, having entered the United Kingdom as a child in 2001. Secondly, the Judge had rejected, without considering in the round, all the evidence as to the reliability of some documents relied upon. Thirdly, the Judge had drawn adverse conclusions from the absence of an important witness to the Appellant's case. Fourthly, the Judge had erred in assessing very significant obstacles to reintegration with reference to the Immigration Rules, and particularly paragraph 276ADE, and finally the Judge's assessment in relation to Article 8 ECHR claims had failed to address the issues appropriately. Before me in argument, Mr Waheed helpfully concentrated on the criticisms of the Judge's conclusions made in relation to the asylum claim.
3. It is self-evident from a fair reading of the decision as a whole, that the Judge was greatly exercised by the failure of the Appellant to make a claim at the earliest opportunity on coming into the United Kingdom. Then, having not done so, pursued a series of applications and indeed at least one appeal, which were unrelated to an asylum/protection based claim. Ultimately, the first claim made on asylum grounds was made in 2015, which was then refused. The Judge plainly took into account the immigration history and really does not address the extent to which, at least at the time he arrived, the Judge's criticisms of the Appellant's failing to claim asylum at the earliest moment on arrival are, to miss the point. For at the time he was under the age of 18 and not, it can be fairly said, perhaps at that age, understanding the extent to which he should seek protection.
4. The Judge may be right as to the criticisms after the Appellant got into the hands of advisers and made applications which failed, and he may be right that there is at least some criticism to be attached to the late claim, bearing in mind the Appellant having entered in 2001 aged 13, had reached his majority some five years later in 2006/7. Ultimately, it is clear that the Judge decision was particularly driven by the context of the Appellant's immigration history. It seemed to me the reasoning fell short of being

clear as to why the substance of the claim was being refused in the context of the background information, and the Judge's knowledge of both the political differences between the Awami League and the BNP, the threats that might be posed by Jamaat-e-Islami and by the political situation which was touched upon by Mr Malik. I do not form any positive view about whether the Appellant's claim would succeed, but it seemed to me that once the Judge concluded in the context of the immigration history, albeit with a brevity of reasoning, that the Appellant's claim was simply 'not credible', nor was the Appellant credible, and nor did the Judge attach any weight whatsoever to other evidence sought to be put forward on his behalf seemingly for the direct reason of finding the Appellant's claim without credibility or foundation. I find that conclusions the Judge reached are not adequately or sufficiently explained.

5. In the circumstances, it seemed to me that the Judge's criticisms raised in D54, 55, 56, 57, 58, 59, 60, 61 and 62 demonstrate that the conclusion rejecting supporting witnesses at D64 is simply not sustainable. In those circumstances the background information simply not being addressed, contextually or at all, satisfied me that the Original Tribunal's decision cannot stand.
6. So far as the Article 8 claim is concerned, and the claim under the Immigration Rules, the appropriate course is for those conclusions equally not to stand. The First-tier Tribunal in looking at this again can do so with carte blanche. The Original Tribunal's decision does not stand. No findings of fact are to stand and the matter is to be remade in the First-tier Tribunal, not before First-tier Tribunal Judge Lucas.

DECISION

7. Appeal allowed to extent it is to be remade in the FtT (IAC).

DIRECTIONS

- (1) List for further hearing – two-and-a-half hours in First-tier Tribunal at Taylor House not before Judge Lucas.
- (2) No interpreter required unless notice is given to the First-tier Tribunal not less than ten days in advance of the further hearing.
- (3) Any further evidence relied upon in relation to either the protection claims or in relation to Article 8 ECHR to be provided not less than ten clear days before the further hearing unless the First-tier Tribunal gives other directions in substitution.

ANONYMITY DIRECTION

No anonymity direction was requested nor is one appropriate.

Signed

Date 24 July 2018

Deputy Upper Tribunal Judge Davey