



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

Appeal Number: PA/11401/2017

THE IMMIGRATION ACTS

Heard at Field House

On 5th March 2018

**Decision & Reasons
Promulgated**

On 26th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

**M.R.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson, in-house Counsel at Elder Rahimi Solicitors

For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Colvin dismissing his appeal against the Secretary of State's decision to refuse to grant asylum and humanitarian protection. The decision of Judge Colvin was promulgated on 28th December 2017. The Appellant was granted permission to appeal by First-tier Tribunal Judge Grant-Hutchison. The grounds upon which permission was granted may be summarised as follows:

"It is arguable that the judge has misdirected himself (a) by failing to take into account that the Appellant's father has 2 24-hour bodyguards

at home when assessing the credibility and plausibility of the Appellant's account as regards to the threats that had been made against his father; (b) by failing to take into account the letter from the President of the BNP Beanibazar Upazila Branch, Sylet or an affidavit from [BU], a neighbour of the Appellant's father affirming that persons from the Awami League ruling party have come to the house of the Appellant's father to search for him so forcing the father to leave the house for long periods which, along with other evidence supports the Appellant's core claim that his father is locally active in the BNP and has been subject to harassment by the Awami League; (c) although the court documents filed against the Appellant's father may be complex and difficult to follow in detail, this should not stop the judge in failing to engage properly with the documents which support the Appellant's account that his father is being so targeted."

2. I was not provided with a Rule 24 response from the Respondent as one was not produced for the purposes of this appeal.

Error of Law

3. At the close of submissions, I indicated I found an error of law such that the decision should be set aside, but that my reasons would follow. My reasons for so finding are as follows.
4. As indicated at the close of the hearing, I did find that there was an error of law. I will deal with the grounds in the order they arise to illustrate my reasons. In respect of Ground 1 the Appellant, as summarised above, contends that the First-tier Tribunal Judge accepted that the Appellant's father was a successful businessman in Sylhet who employed two guards at the family home (see paragraph 27). It was also highlighted that the First-tier Judge had acknowledged that background evidence presented showed that there was evidence of kidnapping by criminal gangs of the children of wealthy businessmen for ransom purposes (see paragraphs 20, 25 and 26 of the decision). This evidence was contained at page 92 of tab 2 of the bundle. Given these findings as they appear on the face of the decision it does appear that there is an omission in the judge's consideration in that although the First-tier Judge did not accept that the father was a politically active member of the BNP (Bangladesh National Party), the consequence of the judge's findings required the judge to therefore consider whether the ultimate scenario of the judge being a successful businessman and the Appellant being his child would result in a risk to the Appellant on return to Bangladesh as a consequence of kidnapping motivated by financial purposes. Whilst this ground does represent an omission it would *not* have been sufficient in of itself to demonstrate a material error of law such that the decision should be set aside. However, there were two further grounds pleaded which I shall now consider.
5. Turning to Ground 2, the Appellant contends that, in rejecting the father's claim to not be a locally prominent member of the opposition Bangladesh National Party in the Beanibazar district of Sylhet, the First-tier Judge has failed to take into account the documentary evidence before the Tribunal which evidenced that fact and the difficulties that the father currently

faces. Thus, in short the Appellant criticises the statement at paragraph 27 of the decision that there was no independent evidence showing that the father was a politician of some prominence in that district and the rejection of the claim that he has a high profile in the BNP or is politically active as claimed (see paragraph 28 of the decision). Specifically, the Appellant complains that a letter from the president of the local branch was not taken into consideration. This letter can be seen at page 9, tab 1 of the Appellant's bundle and is on letterheaded paper and purports to be from the president of that branch. I find that on the face of the decision that letter was not considered by the judge, nor findings made upon it. Secondly, the Appellant complains that an affidavit from the family's neighbour, namely, [BU], was also not taken into account in that it corroborated the father's evidence and the Appellant's account and was endorsed before an advocate and therefore warranted consideration before the claim concerning the father's profile could be rejected. Again this document does not find consideration in the judge's findings and as such I do find that there is an error in respect of Ground 2.

6. Turning to Ground 3, the final complaint made is that the judge failed to engage properly or at all with the content of many court documents that were provided. Although the judge notes the documents at paragraph 25 of the decision, it is true to say that the judge has not considered those documents in terms of their content or their context or whether those documents were indeed genuine and/or reliable for the purposes of enhancing the Appellant's claim before a finding was made that the claim was not made out on the evidence before the Tribunal. Consequently, given this glaring omission, in respect of what purports to be key documentary evidence supporting the father's profile as a politically active local member of the BNP, I do find that this ground is also made out and represents an error of law.
7. Given the three grounds above have been made out, I do find that there is a material error of law such that the decision is flawed.
8. In light of the above findings, I set aside the decision and findings of the First-tier Tribunal entirely.

Notice of Decision

9. The appeal to the Upper Tribunal is allowed.
10. The making of the previous decision involved the making of errors on points of law and is set aside.
11. The appeal is to be remitted to the First-tier Tribunal to be heard by a differently constituted bench.
12. The First-tier Tribunal's anonymity direction is maintained.

Signed

Date 22/03/2018

Deputy Upper Tribunal Judge Saini