



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

Appeal Number: PA/04349/2018

THE IMMIGRATION ACTS

Heard at Field House

On 27th February 2019

**Decision & Reasons
Promulgated
On 7th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**NI
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Alam of Counsel instructed by Hamlet Solicitors
For the Respondent: Mrs L Kenny, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Loke (the judge) of the First-tier Tribunal (the FTT) promulgated on 8th January 2019.

2. The Appellant is a national of Bangladesh born 30th June 1986. He arrived in the UK in November 2009 as a student. On 25th August 2016 he claimed asylum on the basis of his political opinion, that being his involvement with the Bangladesh Nationalist Party (BNP).
3. The international protection and human rights claim was refused on 29th March 2018.
4. The appeal was heard by the judge on 12th December 2018. The judge heard evidence from the Appellant and did not find him to be credible. The judge considered court documents said to emanate from Bangladesh and found that they could not be relied upon. The judge found the Appellant would not be at risk if returned to Bangladesh. The judge considered Article 8 of the 1950 European Convention, finding that the Appellant had not developed family life in the UK. Little weight was attached to his private life because it had been established while in the UK with a precarious immigration status. The judge concluded that the Appellant's removal to Bangladesh would be proportionate and would not breach Article 8. The appeal was dismissed on all grounds.

The Application for Permission to Appeal

5. The Appellant's solicitors relied upon four grounds.
6. Firstly it was contended that the judge was wrong at paragraph 11 to conclude "there is no credible evidence of any compelling circumstances that would merit consideration outside the ambit of the Immigration Rules." It was contended that the judge had failed to follow guidance given in ME Nigeria [2012] UKUT 00393 (IAC).
7. Secondly it was submitted that the judge erred in placing "over reliance on section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004". It was submitted that the Appellant had not concealed any information nor misled the court.
8. Thirdly it was submitted the judge erred in concluding that she was not satisfied even to the lower standard of proof required. It was submitted that an "assessment of lower standard would require being a little bit lenient on to the evidence. From the outset of the determination it appears that the FTTJ has been negative to the appeal."
9. Fourthly it was contended that the judge failed to consider the Appellant's private life in the UK and had failed to make an assessment under paragraph 276ADE of the Immigration Rules.

The Grant of Permission

10. Permission to appeal was granted by Judge Grant-Hutchison in the following terms;

“It is arguable that the judge has misdirected herself by failing to consider the Appellant’s facts and circumstances under paragraph 276ADE of the Immigration Rules before going on to consider his facts and circumstances outside the Immigration Rules under Article 8 of the ECHR.”

11. Following the grant of permission to appeal the Respondent did not lodge a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
12. Directions were given that there should be an oral hearing before the Upper Tribunal to ascertain whether the FTT decision contained an error of law such that it must be set aside.

My Analysis and Conclusions

13. At the oral hearing Mr Alam relied upon the grounds upon which permission to appeal had been granted with the exception of Ground 1 which did not appear to relate to this appeal. I was asked to find that the judge had erred in failing to consider paragraph 276ADE(1)(vi). In addition although Mr Alam accepted that the grounds were generic, I was asked to find that they challenged the findings made by the judge in relation to the protection claim. Mr Alam submitted that the judge had erred by not making a factual finding as to whether the Appellant was a member of the BNP. In addition there were documents submitted from the BNP which had not been considered.
14. On behalf of the Respondent it was accepted that the judge had erred by failing to consider paragraph 276ADE(1)(vi) but this was not material as there was no evidence before the judge which could amount to very significant obstacles. It was submitted that the decision of the FTT disclosed no error in relation to the protection claim.
15. I consider that Mr Alam was correct not rely upon Ground 1. It clearly has no application to this case.
16. I find that the grounds do not disclose any error of law in relation to the consideration by the judge of the Appellant’s claim for international protection. Paragraph 9 demonstrates that the judge applied the correct burden and standard of proof. The judge carefully considered the Appellant’s credibility and noted relevant inconsistencies. The judge was entitled to find that those inconsistencies went to the core of the claim. The judge considered court documents submitted by the Appellant at paragraphs 15 and 16 and applied the appropriate principles, noting that it was for the Appellant to show that those documents could be relied upon. The judge found the documents could not be relied upon and gave adequate reasons for that finding.
17. In my view the judge erred at paragraph 18 in making reference to section 8(6) as the appropriate reference should have been to section 8(5) as the Appellant had made a claim for asylum after receiving notification of an Immigration Decision. That is not a material error of law. There is

reference in the grounds submitted on behalf of the Appellant to section 8(2) but the judge makes no reference to that, and I cannot see any error of law on this point.

18. The judge erred in failing to specifically consider paragraph 276ADE(1)(vi) which was relied upon in the Appellant's skeleton argument. However in the circumstances I find the error is not material.
19. To succeed with reference to paragraph 276ADE(1)(vi) the Appellant must show that there would be very significant obstacles to his reintegration into Bangladesh. He relied upon two issues before the FTT, those being his political activities, and his relationship with his nephew. The judge in fact dealt with both of those issues. The judge found that the Appellant would not be at risk by reason of his political activities as his account was not accepted as credible. With reference to his nephew the judge considered this at paragraphs 23-27 and found that the Appellant had not developed a family relationship with his nephew and that the main carer of his nephew is the Appellant's uncle. The judge found that the uncle is the nephew's main and primary carer and made a specific finding at paragraph 27 that there was no evidence to indicate that the uncle or the nephew would suffer any practical or emotional difficulties if the Appellant returned to Bangladesh.
20. The judge noted that the Appellant's skeleton argument raised the issue of depression, and dealt with this at paragraph 20 recording that the Appellant gave evidence that he had no mental health issues. The Appellant's Counsel did not address the judge in relation to the Appellant's alleged depression. The judge noted the lack of any medical evidence to show that the Appellant had been diagnosed with depression. The judge found that the Appellant would not be at risk if returned to Bangladesh, having found that his claim in relation to his political activities was not credible. The Appellant did not have any medical issues that could not be treated in Bangladesh. The Appellant is a citizen of Bangladesh. He had resided in Bangladesh for the greater part of his life. The judge specifically considered the Appellant's claimed relationship with his nephew and made findings upon that, finding there was no family relationship which engaged Article 8.
21. There was therefore no evidence before the judge to indicate that the Appellant would encounter very significant obstacles to his integration in Bangladesh. Points raised in the Appellant's skeleton argument on paragraph 276ADE(1)(vi) were considered, analysed and dealt with adequately by the judge despite the lack of any specific reference to paragraph 276ADE(1)(vi).
22. The judge considered the evidence in the round, and made findings open to her to make on that evidence and provided sustainable reasons for the findings. The decision does not disclose a material error of law.

Notice of Decision

The decision of the FTT does not disclose a material error of law. The appeal is 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 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 28th February 2019

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date 28th February 2019

Deputy Upper Tribunal Judge M A Hall