



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

Appeal Number: PA/10469/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 19th August 2019**

**Decision & Reasons Promulgated
On 23rd August 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

AK

(Anonymity Order made)

Respondent

Representation:

For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer

For the Respondent: Ms Z McCallum, instructed by Londonium solicitors

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the respondent in this determination identified as AK. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. AK, a citizen of Bangladesh, arrived in the UK in November 2009. He remained lawfully in the UK and was granted leave to remain until 30th August 2015. In August 2014 his leave to remain was curtailed and he was served with removal documents. After an unsuccessful judicial review challenge in February 2016, he sought asylum. His asylum claim was refused for reasons set out in a letter dated 15th September 2016. The decision by the First-tier Tribunal on the appeal against that decision was set aside by the Upper Tribunal and the appeal remitted to the First-tier Tribunal to be heard afresh. That appeal was allowed by First-tier Tribunal Judge Aujla for reasons set out in a decision promulgated on 17th June 2019.
2. The Secretary of State sought, and was granted permission to appeal that decision on the grounds:
 - Ground 1: procedural irregularity/unfairness;
 - Ground 2: Making a material misdirection of law
 - Ground 3: perversity.

Ground 1

3. The SSHD submitted that the First-tier Tribunal refused to allow cross-examination of AK, thus amounting to a procedural error of law. In support he submitted that [13] of the decision did not reflect what had actually happened and that the submission was supported by the hearing minute prepared by the Presenting Officer.
4. [13] of the decision reads as follows:

“I had lengthy discussions with both representatives as to the issues in the appeal. In addition to claiming that the Appellant was an activist in the Bangladesh National Party (“the BNP”) both in Bangladesh and since arriving in the United Kingdom, the Appellant claimed that members of the Awami league (“AL”) political party and the authorities had filed three false criminal charges against him. A number of documents including FIRs were submitted as evidence of that. There had been numerous adjournments before to give the respondent the opportunity to have those documents verified in Bangladesh through the British High Commission. The respondent had provided three different Document Verification Reports (“the DVRs”). It was common ground between me and the representatives that if it was found that false criminal cases had indeed been commenced against the Appellant, the Respondent would have difficulty contesting his protection appeal. In view of that, both representatives were agreed that the matter should proceed by way of submissions only. ... it was considered not necessary to formally call him to give evidence.”
5. The minute relied upon by the SSHD states, in so far as is relevant:

“...Judge gave an indication that he was accepting that the SSHD had verified that the third FIR was genuine at police station level and took it that this implicitly included verification of identity....

...

Appellant tendered but case presented on the basis of submissions only on the basis of the judge's indication that he would be treating the DVR as genuine. Judge also said that he did not feel it was necessary for there to be oral evidence in light of the home office concession as per above. Opposed that approach and it seems to me that the judge erred in law by approaching evidence in that way. My opponent was also prevented from carrying out an examination in chief and kept a note to confirm that both Counsel were prevented from examining the Appellant ...

- Relied on RFRL;
 - Accepted that if the case against the Appellant was genuinely brought by the AL for political purposes as a direct response or target to A's profile then it would be difficult to suggest he wouldn't be at risk on the lower standard. As per above I invited the judge to treat that DVR as merely a concession that there was an FIR with that date and
 - TOEIC test
 - Two FIRs verified as non-genuine; Late receipt of further documents;
 - Third FIR verified as genuine but not confirmed whether the names are genuine;
 - Not credible that he could leave the country if there were outstanding FIR's for him;
 - Complete lack of detail in the letter from BJC at page 48. Unusual vernacular typical of a contrived document; none of the accompanying documents one might expect if it were a genuine narrative.
 - In BD said information travels to all stations."
6. Mr Tarlow acknowledged that the Minute did not support the submission made in the grounds, which was in any event disputed by Ms McCallum. He did not pursue that ground. I am satisfied that the ground is not made out and decline to find an error of law on that basis.

Ground 2

7. In essence the SSHD submits that the judge failed to consider the totality of the evidence in the round when reaching his decision that AK was at risk of being persecuted on his return to Bangladesh. In particular it was submitted the judge had failed to take into account the fact that there had been 2 false FIRs submitted and relied upon, the judge had failed to consider a British High Commission report regarding document verification in Bangladesh and specifically whether names were checked at police station level, that AK had

fraudulently used a proxy to take his TOIEC test and the delay in claiming asylum.

8. Mr Tarlow did not expand upon the grounds relied upon save to draw attention to the fact that AK had submitted 2 FIRs which were found not to be genuine.
9. There were typos in the First-tier Tribunal judge decision as to the dates of the 3 FIRs. Having considered the bundle of documents, I am satisfied that the three FIRs are dated as follows: FIR 14/169 dated 14th June 2016, FIR 19/413 dated 29th December 2008, and FIR 18/25 dated 9th March 2009.
10. FIR 14/169 was the subject of a letter from the Presenting Officers Unit which stated, inter alia,

“... I have recently received notification that this document was verified at Police level in Bangladesh. The document will now be verified at Court level during August 2017. The Home Office hope to receive a DVR in late August to early September 2017.

...”

11. Mr Easton, on behalf of the SSHD before the First-tier Tribunal applied for an adjournment to enable further verification to take place. The First-tier Tribunal judge refused that adjournment request. The SSHD did not seek permission to appeal on the grounds that it was arguable the decision to refuse the adjournment was procedurally unfair.
12. The First-tier Tribunal judge sets out carefully the documents relied upon by both parties, the submissions relied upon by both parties and the evidence before him. He summarises AK’s claim for asylum and the SSHD’s reasons for rejection of that claim. It is clear that the judge had AK’s previous fraudulent behaviour in mind in the context of the background country evidence and that the SSHD had drawn serious adverse credibility conclusions. In the decision, the judge says

“40. The credibility issue raised by the Respondent would simply indicate that the appellant was not a witness of truth. However he had provided explanations and comments in his witness statements on the points raised which I have no reason to reject and therefore find them sustainable. Furthermore the appellant had stated that there were false cases raised against him in Bangladesh which had a political dimension. The respondent had undertaken three DVR visits to the relevant police station/courts in Bangladesh....Even if I ignore the appellant’s account relating to the two false cases he claimed were filed against him relating to the period whilst he was still in Bangladesh (FIRs number 18 dated 09 March 2009 and number 19 dated 29 December 2008), the fact remains that there was verified evidence about the case against him in which he was implicated in the killing of the brother of a member of the AL which killing occurred in Bangladesh on 14 June 2016 ...However the appellant was not in Bangladesh at that time as he had continuously resided in the UK since he arrived here. Therefore, when considering the credibility issues in the light of the evidence before me, I find that they did not have a direct impact on the core of the appellant’s case.

41. The respondent issued the concession letter after the hearing before Judge Walters. It was stated in the letter that the appellant's claim that there was a false murder case filed against him was genuine. It was found to be genuine at the police station level ... on the basis of that [other evidence] I accept that there was reasonable doubt about the cases being filed against the Appellant in 2008 and 2009. However that did not explain the 2006 (sic) case.

42. The respondent's representative from the British High Commission made a further verification visit to the Chief Judicial Magistrate's Court, Sylhet on 21 March 2017. The representative then visited the Metropolitan Sessions Judge's Court and was informed that the case was a murder case which had been transferred to the Additional Sessions Judge's Court Sylhet on 8 October 2017 and was currently pending for a hearing.

43. It is clear to me from the court documentation submitted by the Appellant and the respondent's own DVRs that there was a false case pending against the Appellant in Bangladesh which linked him to a murder. The murder was alleged to have taken place on 14th June 2016 when in fact the Appellant was in the United Kingdom since he first arrived on 18th November 2009....

44. Mr Eaton submitted in his closing submissions that it was not clear whether the Appellant was named in the case as the Respondent's representative would not have on his visit revealed the Appellant's name to the authorities when making enquiries. I do not accept that submission. The Appellant provided numerous other documents such as warrants which named and linked him with a murder case and the respondent's own DVRs confirmed that the case of the same type and FIR number was pending in Bangladesh....

45. ... the accusation against him must be false and politically motivated as claimed by the Appellant. Furthermore, it is clear that the Appellant was to some extent involved with activity on behalf of the BNP whilst he was in Bangladesh. There is also evidence before me that he had been actively involved in the BNP in the United Kingdom.

46. I have taken the country material into account ..."

13. The First-tier Tribunal judge considered the evidence and reached conclusions that were open to him on the evidence before him bearing mind the appropriate burden and standard of proof and taking account of AKs fraudulent behaviour. The SSHD had had ample opportunity to investigate further but despite adjournments had failed either to investigate or failed to produce information adverse to a potential finding that the 2016 FIR was false or contained false information. The judge took account of the submission regarding possible false names – contrary to what is submitted in the grounds of appeal – and discarded that submission.
14. That AK has previously submitted false documents and has committed fraud does not, given the evidence that was before the First-tier Tribunal judge, render his finding unsafe, irrational, unlawful or in error. It was a finding open to him on the evidence.
15. There is no error of law identified in the grounds such as to result in the decision being set aside.

Ground 3

16. The SSHD submits that the First-tier Tribunal judge's conclusion 'verges' on the perverse because AK could not have committed the crime of which he is accused. It may be so that he could not have committed the crime, but the fact remains that the undisturbed findings of the judge are that AK is named on a genuine FIR for a crime he could not have committed, and such naming is politically motivated. The SSHD did not submit during the hearing before the First-tier Tribunal that the 'mistake' would be identified when AK arrived in Bangladesh. Nor was it submitted that the trial process or prison conditions would not be persecutory in such circumstances. The evidence before the judge was that the trial process for that alleged crime was proceeding.
17. As Mr Tarlow acknowledged, it was very difficult to challenge the decision of the First-tier Tribunal judge on the grounds of perversity.
18. The ground is not made out and I decline to find an error of law.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

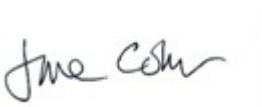
The appeal by the SSHD is dismissed. The decision of the First-tier Tribunal stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 21st August 2019



Upper Tribunal Judge Coker