



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04564/2019

**THE IMMIGRATION ACTS**

Heard at: Field House  
On : 9 December 2020

Decision & Reasons Promulgated  
On : 21 December 2020

Before

UPPER TRIBUNAL JUDGE KEBEDE  
DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

JP  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms E Fitzsimons, instructed by SD Solicitors  
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Bangladesh born on 1 January 1983. He has been given permission to appeal against the decision of First-tier Tribunal Judge Khawar dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant arrived in the United Kingdom on 15 October 2006 with leave to enter as a student and was granted further periods of leave to remain under the points-based system until 15 May 2016. An application for an extension of leave as a Tier 1 Entrepreneur was refused on 7 July 2016 and the decision was maintained on an administrative review, and a further application for leave outside the immigration rules, varied to an application for indefinite leave to remain on 10 years long residency grounds, was refused on 27 June 2017. Following an unsuccessful attempt to challenge the decision to remove him from the UK by way of judicial review proceedings and an application to the Court of Appeal, the appellant applied for asylum on 21 December 2018. His claim was refused on 30 April 2019 and his unsuccessful appeal against that decision has given rise to these proceedings.

3. The appellant's claim for asylum was made in relation to a fear of persecution in Bangladesh on two bases. The first basis was that he had been targeted due to being Hindu and to his support for a Hindu group called Joykalibaru Mandir between September 2005 and February 2006. The appellant claimed to have distributed leaflets for this group and to have attended meetings. He claimed to have been threatened in February 2006 by an Islamic political group, Shibir, which was the same as Jamat e Islami, when he was distributing leaflets and was told to stop his involvement with the Hindu group. After that he stopped working for the group and he came to the UK on 15 October 2006 on a student visa. The second basis was in relation to some land which was taken from his father and grandfather by Rashid Miah and his son in 1971 and where his father was threatened in 1999 and 2002 after he had attempted, unsuccessfully, to get the land back through the courts. In 2012, his father was asked by the same people to sign some papers, but he refused and on 12 August 2012 he was attacked and killed by some men whom he believed were associated with Rashid Miah. The appellant claimed that he was kidnapped by four or five men when on his way to the family office, during a visit to Bangladesh for his father's funeral, on 5 September 2012, and was beaten up and forced to sign some paperwork which he believed to be about the land. He was rescued by the police and taken to hospital and he and his brother filed a statement with the police. He feared being killed if he returned to Bangladesh.

4. The respondent did not accept the appellant's account of his claimed problems with an Islamic political group and rejected that part of his claim. As for the appellant's claim to be at risk from Rashid Miah and his son, the respondent considered that the account of the court challenge to the land appropriation was inconsistent with the country information, that the appellant was speculating about Rashid Miah being involved in his father's death and that there was a lack of supporting evidence in relation to his father's death. With regard to the FIR and charge sheet submitted by the appellant in relation to his claimed kidnapping, these were considered to be inconsistent with the appellant's own evidence and were accorded no weight by the respondent. The respondent considered that the appellant had given inconsistent evidence about whether or not his family remained in Bangladesh. The respondent did not accept that the appellant had a genuine, subjective fear of returning to Bangladesh and found that his claimed fear was, in any event, not objectively well-founded as there was a sufficiency of protection available to him from the authorities in Bangladesh and he could safely relocate to another part of the country.

Although the respondent accepted that the appellant was Hindu, it was not accepted that he would be at risk on that basis. The respondent found that the appellant's removal to Bangladesh would not breach his human rights under Article 3 or 8.

5. The appellant's appeal against that decision was heard on 24 February 2020 before First-tier Tribunal Judge Khawar. The appellant gave oral evidence before the judge who found him to be an unreliable witness. The judge did not believe the appellant's account of having to go into hiding after being threatened in February 2006 and did not accept that he was of any interest to the Shibir group. The judge also found the appellant's account of being at risk due to a historic land dispute to lack credibility and considered that his account had been inconsistent and lacking in supporting evidence that could reasonably have been obtained. He did not accept the appellant's account of his family being threatened and leaving Bangladesh for India in 2015. The judge had regard to an expert report relied upon by the appellant from a practising lawyer in Bangladesh in relation to the reliability of the FIR and charge sheet, but found neither that report nor a newspaper article referring to the claimed kidnapping to be of any evidential weight. The judge did not accept the appellant's account about the land dispute and considered that even if there were continuing proceedings, the authorities could provide him with protection. He found that the appellant would be at no risk on return to Bangladesh and that his removal would not breach his human rights. He accordingly dismissed the appeal on all grounds.

6. Permission was sought by the appellant to appeal the judge's decision to the Upper Tribunal, on four grounds: firstly, that the judge made a "Mibanga" error (Mibanga v SSHD [2005] EWCA Civ 367) by making adverse credibility findings about the appellant's account before considering the expert evidence which confirmed the reliability of the documents; secondly, that the judge made adverse findings on the basis of a lack of corroborating evidence; thirdly, that the judge had failed to have regard to the expert's conclusion as to the plausibility of the appellant's account; and fourthly, that the judge failed to consider Article 8 and had erred by saying that a witness was not called to give evidence, when she was.

7. Permission to appeal was granted in the First-tier Tribunal on 4 August 2020 and the matter came before us for a face-to-face hearing on 9 December 2020.

8. Both parties made submissions on the error of law issue.

9. Ms Fitzsimons focussed on the first and third grounds, as consistent with the grant of permission. With regard to the first ground, she submitted that the judge had made very strong adverse credibility findings prior to considering the expert report, contrary to the guidance in Mibanga. She referred by way of example to [25], [26], [28] and [30] of the judge's decision, which preceded the consideration of the expert report at [42] and submitted that the findings at [42] were limited. In regard to those findings at [42], and in relation to ground 3, Ms Fitzsimons submitted that the judge had erred by making adverse findings on the plausibility of the appellant's account without considering the expert's conclusions on the account being plausible. The expert had considered the documents produced by the appellant and had found them to conform to the format he would have

expected for such documentation. The judge had not considered that and had also failed to have regard to the expert's opinion on risk when rejecting the appellant's claim owing to his low level of activities. As for the second ground, Ms Fitzsimons submitted that the appellant had tried to corroborate his account as much as he could by producing documentary evidence and should not have been expected to corroborate every aspect of his account. The judge had erred by requiring him to do so. With regard to the fourth ground, the judge had made a mistake of fact by saying that Article 8 was not relied upon by the appellant when it was, and when submissions had been made on paragraph 276ADE(1) of the immigration rules. The judge was also wrong to say that the witness was not called when she had been tendered, but had not been required to give oral evidence as the respondent's representative did not seek to cross-examine her.

10. Mr Jarvis, in response, relied upon the case of HH (Ethiopia) v Secretary of State for the Home Department [2007] EWCA Civ 306 in submitting that there was nothing unlawful in the judge's approach in assessing credibility and in considering the expert evidence. The majority of the judge's adverse findings were not based on plausibility, but on the appellant's account of particular events occurring in Bangladesh which he found to be significantly inconsistent. The expert's opinion on plausibility therefore did not assist the appellant. As for the documentary evidence, the judge had regard to the expert's opinion but was entitled to accord it limited weight as the expert had only seen scanned copies of the documents and not originals. The judge's reliance on the absence of corroboratory evidence was consistent with the approach set out in SB (Sri Lanka) v The Secretary of State for the Home Department [2019] EWCA Civ 160 and he was entitled to have regard to the absence of evidence which could reasonably have been obtained. Mr Jarvis submitted that any failure by the judge to consider the grounds of appeal based on Article 8 was immaterial as the appellant could not possibly have succeeded on that basis, on the evidence available. He relied upon the case of Sarkar v Secretary of State for the Home Department [2014] EWCA Civ 195 in that regard.

11. Ms Fitzsimons submitted, in reply, that the judge's approach to credibility was one which fell within the category described in HH at [15] as being a Mibanga type of case and there was therefore an error of law in his approach. As for the fourth ground, there were factors which the judge ought to have considered under Article 8, such as the discrimination faced by minority Hindus in Bangladesh and the appellant's medical condition, and he therefore erred in law by failing to consider Article 8.

## **Discussion**

12. In our view the grounds have no merit. We do not agree with Ms Fitzsimons that the judge erred in his approach to the evidence when assessing the credibility of the appellant's account and do not accept that this is a 'Mibanga' type situation. As Mr Jarvis properly submitted, the Court of Appeal in HH at [15] and [16], endorsed the approach in S v SSHD [2006] EWCA Civ 1153 approving the following passage in the AIT's decision, that:

"The Tribunal considers that there is a danger of Mibanga being misunderstood. The judgments in that case are not intended to place judicial fact-finders in a form of forensic straightjacket. In particular, the Court of Appeal is not to be regarded as laying down any rule of law as to the order in which judicial fact-finders are to approach the evidential materials before them. To take Wilson J's 'cake' analogy, all its ingredients cannot be thrown together into the bowl simultaneously. One has to start somewhere. There was nothing illogical about the process by which the Immigration Judge in the present case chose to approach his analytical task."

13. As in the case of HH, we agree with Mr Jarvis that Judge Khawar did not artificially separate the expert evidence from credibility. It is clear that the judge considered all the evidence in the round before making his credibility finding, as is evident from his self-directions at [21], [44] and [47].

14. In any event, as Mr Jarvis submitted, the expert report did not assist the appellant in relation to the inconsistencies identified in his account of his own particular experiences in Bangladesh. The majority of the expert report concerned the general situation for religious minorities, in particular Hindus, in Bangladesh and, aside from the consideration of the documentary evidence, the assessment of the appellant's particular account of events was limited. In so far as the report supported the appellant's claim by way of its references to threats from local extremists and the historic seizure of land from Hindus, the plausibility of the appellant's account was not particularly a matter of concern to the judge. As Mr Jarvis submitted, plausibility was only a peripheral matter in the judge's decision, whereas the issue taken by the judge was with the appellant's account of particular events occurring in Bangladesh which he found to be inconsistent.

15. By way of example, Mr Jarvis referred to the judge's findings at [26] in relation to the letter purportedly from the President of the Kalibari Munderi charitable organisation, which made no mention of the claimed incident in February 2006 and of the appellant having to go into hiding, and to the inconsistent evidence about the incident in February 2006 described by the judge at [27]. At [25] and [28] to [30] the judge made findings on the appellant's limited activities for the Hindu group, the passage of time since his claimed activities and the lack of any ongoing adverse interest from Shibir. Those were all specific matters which the judge considered to undermine the appellant's credibility and there is nothing in the expert report which addressed those issues. Likewise, in relation to the appellant's account of his family's land being seized and of the subsequent and related threats to his family, the judge, at [33] to [41], gave various reasons why the appellant's account of the land transfer lacked credibility, including at [33] and [34] the appellant's lack of knowledge about the title deeds for the land and the timing of the events that he described and, at [35], [38], [39] and [41], his inconsistent evidence about which land the family possessed and the change in his account in that regard. The judge considered the documentary evidence which the appellant had produced and also considered documentation which could reasonably have been produced but had not been obtained. None of these issues were assisted by the expert report.

16. Returning to the "Mibanga" issue, we agree with Mr Jarvis that, having made these observations on the appellant's evidence, the fact that the judge then referred to the expert

evidence at the point that he did, at [42], did not mean that he had already determined credibility without having regard to the report, but that he simply brought into his findings the way in which the expert report may have assisted the Tribunal, namely in relation to the documentary evidence. The judge gave cogent reasons, in that paragraph, as to why the expert's views on the documentary evidence were of limited assistance. We note that the expert found the documents to be reliable only to the extent that they were consistent with the usual format of such documents. He had not seen the original documents but had only been provided with scanned copies. On that basis, the judge was perfectly entitled to accord the documents, and the expert's conclusions arising from those documents, limited weight.

17. Having considered the expert report, the judge went on, at [43] to [44] and [48], to give further reasons why he considered the appellant's claim to lack credibility, including the section 8 concerns as to the circumstances under which the asylum claim was made and the late stage at which it was made. The judge tied all his findings together in his conclusions and then made alternative findings at [45] and [46] on risk on return in terms of sufficiency of protection and internal relocation. As such we find no merit in the challenge in the grounds to the judge's approach to the evidence and to his assessment of credibility.

18. As for the challenge in the second ground, we consider that the judge was perfectly entitled to draw the adverse conclusions that he did, in his overall credibility assessment, from the fact that there was documentary evidence which could have been obtained by the appellant and which the appellant could reasonably have been expected to obtain, but which he had not produced. The judge was not thereby imposing upon the appellant a duty to produce corroborating evidence, but was simply making observations about the lack of such evidence as he was entitled to do in accordance with the findings in SB (Sri Lanka) at [46].

19. Turning to the fourth ground, we do not consider that anything material arises from the judge's reference at [4] to the witness not being "called". It is clearly a matter of semantics and what the judge meant was that the witness did not actually give any oral evidence. The record of proceedings reflects the fact that the witness was tendered for cross-examination but that the respondent's representative had no questions for her. It is clear from [53] that the judge had regard to the witness's evidence in her statement.

20. As for the assertion that the judge made a mistake of fact by stating that Article 8 was not relied upon, we note that, whilst Article 8 was raised in the grounds of appeal before the judge, the focus of the appeal at the hearing was on the appellant's protection claim. As we advised Ms Fitzsimons, the detailed record of proceedings on the court file does not show that there were any submissions made on Article 8 and therefore even if submissions were made, they were clearly not detailed or expansive. The judge made findings on Article 8 at [53] in his decision, albeit briefly, and we agree with Mr Jarvis that the appellant could not have succeeded on an Article 8 claim in any event, on the evidence before the judge. We do not consider any material error to have arisen in that regard.

21. For all of these reasons we consider that the grounds of appeal do not disclose any errors of law requiring the judge's decision to be set aside. The judge clearly had regard to all the evidence, both oral and documentary, and made his credibility findings on the basis of a full and complete assessment of that evidence, taken as a whole. He was entitled to make the adverse findings that he did, for the reasons fully and cogently given, and was entitled to conclude that the appellant had failed to show that he would be at risk on return to Bangladesh and that his removal to that country would breach his human rights.

## **DECISION**

22. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. We do not set aside the decision. The decision to dismiss the appeal stands.

### **Anonymity**

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: *S Kebede*  
Upper Tribunal Judge Kebede

Dated: 10 December 2020