



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04781/2019

THE IMMIGRATION ACTS

Heard at Field House
On 20 March 2020

Decision & Reasons Promulgated
On 29 April 2020

Before

UPPER TRIBUNAL JUDGE HANSON

Between

RIDOY AHMED
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Shah of Taj Solicitors.

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Juss ('the Judge'), promulgated on 23 October 2019, in which the Judge dismissed the appellant's appeal on all grounds.

Background

2. The appellant, a male born on 5 May 1980 claims to be a citizen of Myanmar which was disputed by the respondent.
3. The Judge, having had the opportunity of considering written and oral evidence, sets out his findings of fact from [14] of the decision under challenge the relevant points of which are summarised as follows:
 - a. The Judge was not clear what point the appellant's representative were seeking to make in relation to previous application as a stateless citizen made on 29 December 2015 and refused by the respondent on 13 April 2017. The Judge was not satisfied the appellant was completely unaware that his 'broker' was making an application for him as a stateless person. The Judge refers to the fact the appellant stated in written submissions that the respondent had failed to consider the statelessness of the Rohingya Muslims in Rakhine State of Myanmar. The Judge finds the appellant was responsible for the application made on his behalf [16].
 - b. The Judge considered a Forensic Science Report written by a Forensic Document Examiner concluding there was limited evidence the appellant did not sign the application for leave to remain dated 22/12/2015 based on a comparison between specimen signatures and the signature on the application. The Judge had found the appellant had instructed a 'broker' to regularise his stay and that the content of the application was the responsibility of the appellant [17].
 - c. The Judge noted the appellant's explanation for being unable to provide background information as being that he left his home state when he was young, had a traumatic childhood, and disagreed with the respondent's conclusion that he had provided conflicting accounts in relation to the languages he speaks. The Judge notes the respondents incredulity at how the appellant could have forgotten his native language in light of his claim to have been brought up solely in a Rohingya speaking environment until the age of 13. The Judge found the appellant had come the United Kingdom using a forged passport. The Judge noted the appellant was to be returned to Bangladesh [18].
 - d. The Judge takes into account the country information material including the respondent's CPIN and human rights reports provided. The Judge finds the appellant is returnable to Bangladesh where he grew into adulthood and where he worked and that there was no suggestion he will be mistreated if returned there. The Judge notes the appellant does not have a passport but that it is not accepted he is a Myanmar national, but is returnable to Bangladesh, so did not see how evidence relied upon by the appellant regarding Rohingya being returned from other countries assisted him in any way [19].
 - e. The Judge found the appellant is not a refugee as he did not establish a well-founded fear of persecution for the reasons on which he based his asylum claim. Accordingly the Judge finds the appellant cannot qualify for humanitarian protection [20].
 - f. The Judge thereafter considers the appellant's human rights claim concluding article 3 falls in line with the dismissal of the protection claim [21].
 - g. The Judge concludes the appellant cannot succeed under paragraph 276ADE Appendix FM and article 8 ECHR for the reasons set out in the refusal letter, and in light of it being found there were no insurmountable obstacles to the appellant reintegration into Bangladeshi society or exceptional circumstances sufficient to outweigh the public interest in his removal [22].

4. The appellant sought permission to appeal which was granted by another judge of the First-Tier Tribunal, the operative part of which is in the following terms:
 1. The core issue in the protection appeal is whether the appellant is a Rohingya from Burma/Mayanma or, as the respondent believes, a Bangladeshi national.
 2. The FtTJ noted that there was a nationality dispute that arguably failed to resolve it. Instead it appears he reasoned from the fact the appellant was able to be returned to Bangladesh, which the appellant's solicitor denies was the case, that he could not be at risk in Burma/Mayanma. Arguably the FtTJ's reasons are not even "tolerably clear".
 3. Permission is granted to argue all the grounds of appeal, although the strongest ground is the one I have indicated. I note that the FtTJ has arguably erred in his assessment of the paragraph 276ADE (1) (vi) ground by misdirecting himself to apply the test of 'insurmountable obstacles'.

Error of law

5. The decision under challenge may not be in the terms the author of the appellants grounds would wish to see it, but it can be clearly inferred from the Judge's decision that he rejects the appellant's claim to be a Rohingya. At [19] the Judge clearly records "and is not accepted as being a Myanmar national". The comment the appellant is returnable to Bangladesh is not the determinative issue but an observation by the Judge in light of the rejection of the claimed nationality.
6. The Judge rejects the appellant's claim which is based upon a real risk he will face as a member of the Rohingya ethnic group, although the Judge also notes there was no credible evidence of the Rohingya being returned by the Bangladeshi government to Myanmar in any event.
7. The appellant claimed to be stateless, which was the point of filing the stateless application which was refused by the Secretary of State for arguably sustainable reasons, but the Judge does not accept this is so.
8. The Judge is criticised in the grounds in relation to language issues but in respect of that and other issues the Judge writes:
 18. ... He takes issue with why the SSHD does not accept that he is a Rohingya from Myanmar (§7a). He then tackles the reasons given by the SSHD in refusing his application, that he was unable to provide background information, and explains that he left when he was young and 'had a traumatic childhood' (§10). He particularly takes issue with the allegation that he had provided 'conflicting account in relation to the languages I speak', and states that 'I explained that I forgot my mother tongue due to not practising the language for a prolonged period' (§11). The SSHD's incredulity at how the Appellant could have forgotten his language given that 'I was brought up solely in Rohingya speaking environment up until the age of 13' is answered by the Appellant on the basis that 'I left my country of origin at an early age....' (§ 12). He then accepts that the 'Rohingya people share a common language with the Chittagonian Bengali language spoken in the Chittagong Division of

Bangladesh' (§13). As for the fact that he is 'not able to answer a lot of questions regarding borders, currency, location of the village and landmarks of Myanmar', explains that 'I have answered all the questions to the best of my knowledge....' (§15). There after he deals with the 'delay in Asylum claim' and explains that 'I am an illiterate person, and did not know the process for claiming asylum in the UK' (§24) and further that, 'I am a layperson and did not know I may have [an] asylum claim because of my ethnicity' (§25). As to the allegation against him that he came to the UK 'with a forged passport' he states that 'I disagree with the Respondent's assertion and maintained that I came to the UK with the help of an agent....' (§26). However, this surely does not mean that he did not use a forged passport. He could have both used an Agent and used a forged passport, which in fact he did as a matter of fact, so that it is pointless to deny it. He then addressed his further fear on the basis that as a Rohingya from Myanmar he would 'face persecution' (§28). Surely, however, this only applies if he is being returned to Myanmar and not to Bangladesh which is the case here, and also it only applies if the Appellant is a Rohingya (see also §31).

9. The Judge clearly considered the evidence with the required degree of anxious scrutiny before coming to the conclusion that the appellant had not established a well-founded fear of persecution as he had not established that he was who he claims to be and therefore a person entitled to a grant of international protection on that basis.
10. Whilst the grounds disagree with that conclusion and put forward the appellant's argument as to why the Judge has erred in law the grounds fail to establish arguable legal error material to the decision to dismiss the appeal. This is not an appeal in which only one finding was open to the Judge, and in particular that the only finding was one in the appellant's favour. The weight to be given to the evidence was a matter for the Judge. The appellant was represented at the hearing by Mr Shah who had the opportunity to place any further evidence he was seeking to rely upon before the Judge or who could have clarified any points he thought required further submissions. It is not made out the Judge did not allow the representatives to make submissions such as to amount to a procedural error giving rise to unfairness. The Judge was entitled to advise the parties of those matters upon which further evidence or submission were required.
11. Whilst the Judge may not have referred to every part of the evidence made available that does not amount to arguable legal error. As noted above, the Judge clearly considered the evidence. Adequate reasons have been given in support of the findings of the Judge. The weight to be given to the evidence was a matter for the Judge.
12. In terms of the human rights claim, this was clearly considered by the Judge. The fact the appellant speaks English and has never claimed public funds as he has worked at an Indian restaurant (even though he had no lawful right to do so), is no more than a neutral factor pursuant to section 117 B of the 2002 Act. The fact the appellant had been in the United Kingdom for 17 years and 8 months does not entitle him to succeed under paragraph 276ADE where a minimum 20 years is required. The appellant's stay in the United Kingdom has been unlawful

throughout. No insurmountable obstacles to the appellant reintegrating into life in Bangladesh was made out before the Judge. The finding the appellant could not succeed either within or outside the Immigration Rules is clearly a finding within the range of those available to the Judge on the evidence.

13. It is not made out the findings made are outside the range of those reasonably available to the Judge on the evidence such as to warrant the Upper Tribunal interfering any further in relation to this matter.

Decision

14. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

15. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 24 March 2020