



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

Appeal Number: AA/01539/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 4 July 2013**

**Date sent
On 10 July 2013**

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MR MD ABDUL HANNAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Hosein a legal representative from E1 Solicitors
For the Respondent: Mrs M Tanner a Senior Home Office Presenting
Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh who was born on 12 February 1982. He has been given permission to appeal the determination of First-Tier Tribunal Judge Kelsey who dismissed his appeal against the respondent's decision of 5 February 2013 to give directions for his removal from the UK following the refusal of asylum.
2. As the judge records in paragraph 2 of his determination the appellant applied to come to the UK on a working holiday Visa in

May 2006. His application was refused and he appealed. His appeal was allowed in November 2007 and he was issued with a visa valid until 1 November 2009. He entered the UK on about 12 December 2007. After his Visa expired on 1 November 2009 he failed to contact the respondent or do anything to regularise his status. He was discovered working in a restaurant in Essex in October 2010. He was issued forms is nervous stay and given instructions to report on a weekly basis. He failed to do so and was next discovered working in a restaurant in Cumbria on 21 October 2012. He was using a counterfeit British passport and claimed that his own passport had been stolen. He admitted that he had been working illegally the five years as a chef in restaurants where he was provided with accommodation. He was detained. He claimed asylum.

3. The basis of the appellant's asylum claim was that he was a witness to a murder and had given evidence against the accused. Two other witnesses had been killed and he feared that he would be killed if he went back to Bangladesh. Subsequently, in his evidence at the hearing before the judge, he added that there was a political element because those who were threatening him were from the Awami League whereas he was a supporter of the BNP.
4. Following the refusal of the appellant's application he appealed and the judge heard his appeal on 20 March 2013. The respondent was represented but the appellant was not. He attended and gave evidence together with a man who the appellant claimed was his father. I will refer to this man as the appellant's father although the judge doubted that they were father and son.
5. The judge comprehensively disbelieved the appellant. Except, by implication, accepting that he was a citizen of Bangladesh the judge did not believe any of his or his father's evidence which related to what the appellant claimed happened in Bangladesh or to his life in this country. He dismissed the appeal on asylum, humanitarian protection and human rights grounds.
6. The appellant sought and was granted permission to appeal. The grounds do not clearly identify any alleged error of law. However, permission to appeal was granted in terms which indicate that the judge may have erred in by failing to address the core asylum Article 3 and 8 grounds.
7. The appellant has now obtained legal representation. Further documentary evidence has been submitted since the hearing before the judge. The appellant has submitted DNA report from Kings College London which, it is claimed, indicates that his father is almost certainly his natural father. At the hearing Mrs Tanner submitted an extract from the information provided by the father when he applied for status in this country. He names his children and one of them, with the same names as the appellant, has been given a different date of birth from that claimed by the appellant.

None of this material, which was not before the judge, is relevant or can be considered in deciding whether the judge erred in law.

8. Mr Hosein submitted that whilst the judge dealt with the credibility of the appellant he did not address the Article 3 or 8 human rights grounds or whether it would be safe for him to return to Bangladesh. The judge should have accepted that the appellant and his father were related as claimed in which case there was an obvious implication that they had a family life together in this country and the judge should have addressed this. He submitted on what I am told are specific instructions that at the hearing before the judge the appellant never admitted to having worked illegally in this country. It was accepted that the appellant had given evidence with the help of an interpreter. Also on instructions I was informed that the appellant now claimed that he had lived with his father at all times since he arrived in this country. His application form to come to this country as a working holidaymaker had been completed by a family friend who, whilst he was referred to as "uncle" was not in fact a relative.
9. Whilst Mrs Tanner took me through a number of aspects of the determination, linking them to the reasons for refusal letter, her submissions were, in essence, that the judge did not err in law in any way. On the evidence before him it was open to him to conclude that he did not believe anything the appellant said. In the light of his finding to that effect no argument had been put forward as to how and why the appellant would be at risk on return.
10. Mr Hosein replied that the judge had not concluded that the appellant and his father were not related as claimed. However, when Mrs Tanner drew attention to paragraph 72 of the determination he withdrew the submission. I reserved my determination.
11. Some of the submissions made by Mr Hosein, which I accept are made on clear instructions from the appellant, do not assist him. Rather, they point to further inconsistencies in his evidence. The claim by the appellant that he did not admit to the judge that he had been working illegally in this country for several years was made for the first time at the hearing before me and without any advance notification. It flies in the face of the clear statement by the judge in paragraph 22 of the determination. The claim by the appellant that he has lived with his father at all time since he arrived in this country is inconsistent with his own claims that he had been working illegally for five years as a chef in restaurants which provides him with accommodation. He was found working in restaurants in Essex and Cumbria. The claim that he did not complete the original application form was made for the first time today.
12. Neither the grounds nor Mr Hosein's submissions seek to argue that the judge erred in law in reaching his wide ranging adverse credibility findings against the appellant and his father. That is not surprising because the findings are clear and strongly supported by

the evidence which the judge sets out. The judge records the basis of the appellant's claim, the respondent case and the evidence before his findings and reasons in paragraph 22 to 27. There is no error of law in the adverse credibility findings.

13. The appellants claim that he was the son of his father was not supported by any documentary evidence and doubted by the judge. More importantly, in connection with any Article 8 grounds it was open to the judge to disbelieve their evidence that they have lived together in this country.
14. There is nothing which calls into question the judge's statement in paragraph 26 of the determination that; "there is no claim made under the ECHR". However, even if there had been Article 8 human rights grounds, the judge's findings were such that the appellant had not established any family life with his father in this country, had not claimed to have a family life here with anyone else or any private life above and beyond the fact that he had been in the UK without permission and working illegally since November 2009. On the evidence before the judge and the findings which he was entitled to make I can see no basis on which the appellant could succeed on Article 8 human rights grounds.
15. Whilst it is argued that there is a gap in the judge's reasoning between the adverse credibility findings and the conclusions that the appellant failed on asylum and humanitarian protection grounds no basis has been put forward on which the appellant might have succeeded in the light of these findings. The appellant has not shown any way in which he would be at risk on return in the light of these findings either in relation to his claims or for any other reason. There is no material error of law.
16. I find that the judge reached conclusions clearly open to him on the evidence. There is no error of law and I uphold his determination.

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Signed
Upper Tribunal Judge Moulden

Date 5 July 2013